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BRIEF OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1906.

HOME SAVINGS BANK, PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES, AND THE CITY COUNCIL OF SAID CITY, AS A BOARD OF REVIEW; DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF IOWA

HORATIO F. DALE AND WM. G. HARVISON,
Attorneys for Plaintiff in Error.

Due and legal service hereof is hereby accepted and acknowledged at Des Moines, Iowa, this _____ day of _____ 1906.

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Attorneys for Defendants in Error.

Synopsis of Brief of Plaintiff in Error.

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NOTE: There are two other causes pending in this court, each in error to the Supreme Court of Iowa, entitled *Des Moines Savings Bank vs. City of Des Moines, and People's Savings Bank vs. City of Des Moines*, respectively, wherein some of the questions made in the instant case are involved. These three cases were tried together in the District Court, and in the Supreme Court, of Iowa. We respectfully suggest the expediency of submitting and considering them together in this court.

DIVISION 1.

Statement of the Case.

Early in the year, 1902, the Home Savings Bank, plaintiff in error, by its cashier, A. C. Miller, made a sworn statement, in writing, and delivered the same to the proper assessor of the City of Des Moines, as a basis for the taxation of the *moneys and credits* of said Bank. Said statement, Exhibit "1", showed $65,595.00 including the surplus of $10.000, of its moneys and credits, liable to taxation, but subject to deductions claimed by said Bank in the several sums of $3,854.00 for real estate owned by the Bank (separately assessed), and of $32,675.00 of United States Government Bonds held by the Bank, and claimed to be exempt from State taxation; leaving subject to taxation, the sum of $29,066.00. (Trans. 15—*A. C. Miller*, Trans. 19—*J. J. Beck*).

About April 9th, 1902, said Bank received from said assessor the first assessment notice No. 6572, (Ex. 2), dated on said date, showing the assessment of *moneys and credits* belonging to said bank in the sum of $39,486.33, (Trans. 15-*A. C. Miller;* Trans. 16). It was conceded of record that this amount is erroneous, and should have been only $29,486.00, (Trans. 16-*Mr. Bremner, Atty*).

A little later, said bank received from said assessor, a second assessment notice, No. 5996, (Ex. 3), showing an assessment of said Bank on *corporate stock* in the sum of $61,739.00. The only corporation stock then held by said Bank was the sum of $250.00 of stock of the Valley National Bank, (Trans. 15—*A. C. Miller*).

The assessor's book shows that said Bank was assessed, under the first assessment Roll, No. 6572, under the heading of "*Moneys and Credits,*" in the sum of $58,783, the taxable valuation thereof being 25 per cent, thereof, to-wit: the sum of $14,696.00, (Trans. 16—*Assessor's Book*).

Under the Code of Iowa, adopted in 1897, as amended, the taxable valuation of property in said State is 25 per cent of its assessed actual valuation. (Code Sec. 1305; Code Supp. of 1902-1305, including the amendment made by Chap. 30 of the Acts of the 27th. General Assembly of Iowa.)

The claim, made by defendants in error, is that this assessment was made against the Savings Bank, plaintiff in error, upon the *actual value of the shares of stock* of said Savings Bank, in the hands of its shareholders, under and by virtue of the provisions of the Code of Iowa of 1897, Section No. 1322, and that said Savings Bank is *primarily liable* for the payment of said tax, under the general law of the State.

On April 24, 1902, said Bank, duly filed its protest, (Ex. 4) with the Board of Review of the City of Des Moines, being one of the defendants in error. (Trans. 16). It is agreed that said Ex. "4" is identical with Ex. "A," attached to the petition of plaintiff in error. (Trans. 16—*Ex. "A"*; Trans. 13-14).

The Board of Review overruled said protest, and sustained the assessment made by the assessor. (Trans. 16). The board of Review adjourned *sine die* on April 29, 1902. (Trans. 17).

From this action of the Board of Review, plaintiff in error duly appealed to the District Court of the State of Iowa, in and for Polk County. It is conceded, of record, that notice of said appeal was duly served on the proper parties, within the time allowed by law for that purpose. (Trans. 16-17 *Bremner, Attorney*).

On the appeal, plaintiff in error, as plaintiff, on May 2nd, 1902, filed, in said District Court and case, its petition in equity, (Trans. 12-13-14), and on October 20, 1903, said plaintiff filed an amendment to its said petition. (Trans. 14). Thereafter, said cause was tried *de novo,* on the merits, without assignments of error, as an equitable action, and all evidence offered was duly preserved and made of record, (Trans. 15), and is contained in the record before this court. (Trans. 15-19). After argument of counsel, said cause was duly submitted to the court. (Trans. 19). On November 23rd, 1903, final judgment and decree was rendered and entered of record, by said District Court, in said cause, dismissing plaintiff's Petition, and and taxing the costs of the case to plaintiff. (Trans. 19). By statute of Iowa, such appeals to the District Court are triable *de novo*, in equity, without assignments of error (Code of Iowa of 1897-Sec. 1373).

From the foregoing decree, plaintiff in error herein, appealed to the Supreme Court of Iowa, by which court, said cause was again tried *de novo*, in equity, on the merits, without assignments of error. The entire record upon which said cause was heard and determined by the Supreme Court of Iowa, is contained in the transcript (Trans. 11-21).

Assignments of error were abolished in the State of Iowa by Chap. 126 of the Acts of the 30th General Assembly of Iowa. All equity cases, tried below, on the merits, are triable *de novo*, in the Supreme Court of Iowa, (Code of Iowa of 1897—Sec. 3652).

The matters submitted for consideration, in the state Courts, were:

First: The assessment made was, in fact and in legal effect, an assessment upon the *Capital stock* of plaintiff in error, and upon the $32,675.00 of United States bonds, in which the capital of

said Savings Bank was, to that extent, invested; and that such assessment, and Section 1322 of the Code of Iowa of 1897, under which said assessment for taxation was made and sustained, contravene Article 1, Section 8, Clauses 1 and 2, of the Constitution of the United States, conferring upon the United States the power to borrow money, etc.

Second: Said assessment for taxation, and said Code of Iowa of 1897, Section 1322, under which said assessment for taxation was made and sustained, contravene the statutes of the United States. (U. S. Rev. S., Sec. 3701, and the War Revenue Act of 1898, 30 St. L. Chap. 448-Sec. 33; 2 Supp. Rev. St. Pages 779 to 804, exempting from taxation the bonds issued by the United States).

Third: Said Sec. 1322, considered in its relation to other Sections of said Code, contravenes Article XIV of the Amendments to the Constitution of the United States, concerning due process of law and equal protection of the laws, by assessing and taxing to the bank, and making the Bank primarily liable for taxes assessed upon the shares of corporate stock therein, the property of individual stockholders, and not the property of the bank, without giving to the bank the right of full recoupment for such taxes paid by the Bank, and without regard to the dividends or other property, if any, belonging to each stockholder, held by or under the control of the bank; and by casting upon said bank, without possibility of recoupment, the burden and expense of the litigation necessary to collect, by separate suits, from each individual shareholder, the taxes on the shares paid by the Bank.

Said appeal was duly submitted to the Supreme Court of Iowa on November 22nd, 1904, and on December 17th, 1904, that court handed down its opinion deciding said cause against appellant, the plaintiff in error herein. (Trans. 21-22).

On the same day, final judgment was rendered and entered of record in said Court, affirming the judgment and decree below, ordering that a writ of *procedendo* issue accordingly, and adjudging that plaintiff pay the taxed costs of the appeal, and that execution issue therefor. (Trans. 37). To review this judgment, the Writ of Error has been sued out in this case.

The questions involved in this Writ of Error are summarized in the paragraphs respectively numbered First, Second and Third, set out *supra*, and are set out more in detail, in the succeeding Division of this brief.

Division 2.

Specification of Errors.

Plaintiff in error, as and for its specification of errors upon which it relies, respectfully states, as follows:

First: In fact, and in legal effect, the assessment for taxation complained of by the Home Savings Bank, plaintiff in error, was an assessment *upon the capital or capital stock* of plaintiff in error, including $32,675.00 thereof invested in Bonds of the United States, without exempting or deducting from said assessment, said U. S. Bonds, which assessment for taxation was made and sustained under the provisions of Section 1322 of the Code of Iowa of 1897. Said assessment, and said statute, (in so far as it is held to sustain said assessment), are each in violation of the Constitutional power of the United States to borrow money, etc., and in violation of the statutes of the United States, and in violation of the decisions of this court, concerning the exemption of such bonds from taxation by the State.

Second: Congress alone has legislative power or jurisdiction to authorize or permit taxation, by any State, directly or indirectly, of the bonds or other securities issued by the United States, or of the beneficial ownership thereto. The State has no power or jurisdiction over this subject matter, without express authority of or permission from Congress, authorizing the State to exercise such taxing power or jurisdiction. *No such permission has been given by Congress.*

Third: The assessment, by the state of Iowa, or by its municipal subdivisions, of a tax against a private corporation, including plaintiff in error, based upon the value of the shares of stock in the hands of the individual shareholders, and making the corporation *primarily liable* for the payment of such tax, and compelling the corporation to pay such tax from its own funds, without giving to the corporation a right of full recoupment of the tax so paid, from the funds of the shareholder, which may be in its custody, or which may subsequently be received by the corporation, where no other property of the shareholder is, at any time, in the possession or custody, or under the control, of the corporation, and without giving to the corporation the right to retain sufficient of said funds of the shareholder to make full recoupment therefrom to said corporation, is a taking of the property of the corporation to pay the debt or obligation of another, the shareholder, and constitutes a taking of the property of the corporation without compensation and without due process of law, in contravention of the XIV Amendment to the U. S. Constitution.

Fourth: The assessment, by the state, or its municipal subdivisions, of a tax against a private corporation, including plaintiff in error, based upon the value of shares of stock in the hands of the individual shareholder, and making the corporation *primarily liable* for the payment of such tax, and compelling the corporation to pay such tax from its own funds, merely giving to the corporation, at its own expense, the right to sue each of the numerous shareholders, in separate personal actions, to recover the tax so paid, or, at its own expense, to enforce a lien created upon the shares of stock taxed, belonging to each individual shareholder by a sale of the shares of each for the amount of the tax so paid, with the alternative of losing the amounts paid by said corporation to discharge the tax on the shares, is a taking of the property of the corporation without compensation, and without due process of law, in contravention of the XIVth Amendment to the U. S. Constitution.

Fifth: The failure or refusal of the laws of the State of Iowa to grant to State Banks, Savings Banks, (of which plaintiff in error is one), and Loan and Trust Companies, organized under the laws of that State, the right to retain and recoup the corporation, from funds or property of each individual shareholder, to the extent of taxes assessed upon the shares of stock held by each shareholder, which have been paid by the corporation, while granting such right of retention and recoupment to National Banks and to all corporations organized under the laws of said State, other than the corporations first above named, is a denial to Savings Banks, and to plaintiff in error, of the equal protection of the laws, in contravention of the XIVth Amendment to the U. S. Constitution.

Sixth: Compelling a part of the corporations organized under the laws of the State of Iowa, *as agents, to become primarily liable to the State*, or its taxing subdivisions, for the payment of the taxes assessed upon the shares of stock of said corporations owned by the individual shareholders, the real principals, while making *other agents*, to whom the property of their principals is assessed, liable for the payment of the tax assessed, only to *the extent of the money, funds or property of the principal in their possession*, said tax to be paid out of said money or funds, or the proceeds of said property of the principal, is a denial to the corporation, first above mentioned, of the equal protection of the laws, in contravention of the XIVth Amendment to the U. S. Constitution.

DIVISION 3.

The assessment for taxation, complained of, was, in fact and in legal effect, made upon the capital or capital stock of plaintiff in

error, without deducting that part thereof invested in United States Bonds. Such assessment, and the statute of Iowa held to support the same, are each in contravention of the federal constitution and statutes.

In fact, and in legal effect, the assessment for taxation complained of by the Home Savings Bank, plaintiff in error, was an assessment upon the *capital or capital stock* of plaintiff in error, including $32,675.00 thereof, invested in Bonds of the United States without exempting or deducting said U. S. Bonds; which said assessment for taxation was made and sustained under the provisions of Section 1322 of the Code of Iowa of 1897. Said assessment, and said statute, in so far as it has been held to sustain said assessment for taxation are each in violation of the Constitutional powers of the United States to borrow money etc., and in violation of the Statutes of the United States, and in violation of the decisions of this court concerning the exemption of such U. S. Bonds from taxation by the State.

Iowa Statutes on Taxation of Corporations: The parts of Sections 1322, 1323 and 1325, of the Code of Iowa of 1897, which relate to the assessment and collection of taxes upon the shares of stock of corporations, are as follows:

"*Section* 1322: Shares of stock of *National Banks* shall be assessed *to the individual shareholders* at the place where the bank is located. Shares of stock of *State and Savings Banks* and Loan and Trust Companies shall be assessed *to such Banks* and Loan and Trust Companies and not to the individual shareholders.

"*Section* 1323: The shares of stock of any corporation organized under the laws of this state, except those which are not organized for pecuniary profit, *and except corporations otherwise provided for in this act*, shall be assessed to the owners thereof, at the place where its principal business is transacted, the assessment to be on the value of such shares on the first day of January in each year.

"*Section* 1325: The corporations described in the preceding sections *shall be liable for the payment of the taxes* assessed to the stockholders of such corporations, and such tax shall be *payable by the corporation* in the same manner and under the same penalties as in case of taxes due from an individual tax-payer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock, and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such

"corporation in this State, after giving the stockholders thirty "days notice of the amount of such tax and the time and place of "sale, such notices to be by registered letter addressed to the stock-"holder at his postoffice address, as the same appears upon the "books of the company, or is known by its Secretary."

Settled Law. The law is well settled, by this court, that a State tax, upon the *capital or capital stock* of a corporation, is a tax upon United States bonds purchased with the whole or any part of such capital; and that a tax, assessed and levied by the State on U. S. Bonds, is in contravention of the Constitution of the United States giving the government the power to borrow money, etc., and in violation of the Statutes of the United States exempting such bonds from State taxation.

Weston vs. City Council; 27 U. S., (2 Pet.) 449, (7 Law 481).

People (N. Y.) vs. Commissioners; 67 U. S. (2 Black) 620, (17 Law 451).

People (N. Y.) vs. Commissioners; 67 U. S. (2 Black) 635, (17 Law 456).

People (N. Y.) vs. Commissioners; 69 U. S. (2 Wall.), 200, (17 Law. 793).

Bradley vs. People (Ill.); 71 U. S., (4 Wall.) 459, (18 Law 433).

Society vs. Coite; 73 U. S. (6 Wall.) 594, (18 Law 897).

Hamilton Co. vs. Mass., 73 U. S. (6 Wall) 632, (18 Law 904).

National Bank vs. Kentucky, 76 U. S. (9 Wall) 353, (19 Law 701).

Home Insurance Co. vs. New York; 134 U. S. 598 (33 Law 1029).

Iowa Decisions: The decisions of the Supreme Court of Iowa are in full harmony with the holdings of this Court. As early as 1880, the Iowa Court in the case of the *German American Savings Bank vs. The City of Burlington,* 54 Iowa, 609, held that the taxation of the *capital of a Savings Bank* was illegal and unwarranted to the extent that such capital was invested in bonds of the United States, citing and following *2 Black* 620, *2 Wall.* 200, *and 2 Pet.* 449, mentioned above. And this holding was approved and followed in 1895 in *Ottumwa Savings Bank vs. City of Ottumwa,* 95 Iowa, 176. In 1886, the same court held the same doctrine in *Campbell vs. City of Centerville,* 69 Iowa, 439.

It will be seen that the Iowa Court is in entire harmony with this court upon the question involved. Indeed the Iowa Court has at

no time departed from this doctrine. It reached the decree sought to be reviewed because of a change real or fancied in the legislation of the State, and not because of any change in, or overruling of, its prior decisions.

This being true, if it shall appear in the instant case that the assessment was actually, or in legal effect, upon the capital of the bank, or that there has been no change in the law then it is clearly illegal because opposed to the Federal Constitution, Statutes and decisions and the Iowa decisions and ought to be annulled.

In support of our contention that the assessment was not only in legal effect, *but in very fact* upon the capital of the bank we direct attention to the controlling facts in connection therewith.

Facts of the Assessment Actually made: Miller, the cashier of plaintiff in error, in April 1902, made to the local assessor of defendant in error, a verified statement in writing. (Exhibit "1"), showing *moneys and credits* of plaintiff in error, subject to taxation in the sum of $65,595,00, consisting of the *Bank's capital stock and a surplus* of $10,000 etc., and further showing a claim of exemption to the extent of $32,675.00 upon bonds of the United States in which part of the capital of the bank had been invested, and also claiming a deduction of $3,854.00 for real estate owned by the bank and separately assessed, leaving subject to taxation, after deducting said U. S. Bonds and the separately assessed real estate, the net amount of $29,064.17. (Trans. 15).

It is conceded of record that plaintiff in error owned and held, on January 1, 1902, the date as of which this assessment was made, U. S. Government bonds in the said sum of $32,675.00. (Trans. 18, Lines 7-10).

Thereafter the assessor gave to the Bank a notice of assessment, or duplicate Assessment Roll, No. 6572, (Exhibit "2"), dated April 9, 1902, assessing the Bank *upon moneys and credits* in the sum of $39,486.33. (Trans. 15, Lines 27-30). It is conceded, of record, that this was $10,000 too much, and should have been only $29,486.33. (Trans. 16, Lines 6-9).

The assessment Roll No. 6752, was originally carried on to Page 102, Line 24 of the Assessment Book, *as an assessment of the property of the bank, under the heading of moneys and credits,* in said sum of $39,486.33, said amount being subsequently changed on said book, as hereinafter stated. (Trans. 16, Lines 13-18). This assessment, on the Assessment Book, as corrected or changed, and the levies made thereon, were afterwards carried on to the official tax list, by the County Auditor.

A little later, the assessor, by his deputy, Beck, delivered to the Bank another notice of assessment, or a second assessment Roll, No.

5996, (Exhibit "3") assessing the bank in the sum of $61,739.00 *on corporation stock.* (Trans. 15, Lines 31-34). *This assessment was never carried on to the assessment book or on to the tax list.*

The Assessment Books were made up by the assessor. The record concerning the Assessment Book and Tax list, offered in evidence, is as follows:

"Plaintiff also offers in evidence the assessor's book of the "fourth assessorial district of the city of Des Moines for 1902, "showing upon line 24 on double page 102, that it is assessment "roll No. 6572, assessing the Home Savings Bank under the head "of *'moneys and credits'* with the sum of $58,783, the taxable val- "uation of the same being $14,696.00, (25 per cent of the assessed "actual value).

"Plaintiff also offers in evidence from the tax list of the same "district for the year 1902, the first line of page 319, showing an "assessment against the Home Savings Bank under the head of "taxable value of *personal property* in the sum of $14,700.00. "(Trans. 16, Lines 13-22)."

No other part of this Assessment Book was offered in evidence, and there is no conflict or dispute as to this record.

There was some question made with the assessor about some bad debts held by the Bank which accounts for the reduction of the amount from $61,739.00 to the sum of $58.783.00. It was the original Assessment Roll, No. 6572, *upon moneys and credits,* which was carried on to the Assessment Book with the amount increased from $39,486.00, ($10,000 too much), to $58,783. Either the original Assessment Roll, No. 6572, was carried on to the Assessment Book just as it was, and the amount thereafter, changed, or that Assessment Roll was corrected in its amount and then, as corrected, carried on to the Assessment Book. Assessment Roll No. 5996, *on corporation stock, was never carried on to the official Assessment* Book, or on to official Tax List.

Concerning the second assessment or attempted assessment, No. 5996, (Ex. 3), the deputy assessor Beck, testified that they took the capital stock, $50,000.00, the surplus of $10,000, and the undivided profits of $5,595.00, making a total of $65,595; from that they deducted the value of the real estate $3,854, leaving $61,741 subject to taxation. He took it for granted that their shares must be worth that much money. (Trans. 19, lines 19-24).

It is unquestioned that the government bonds owned by the Bank were not deducted from the amount of the assessment made on the Bank's *moneys and credits* or personal property.

The assessor might have intended to change the first assessment which he made, but he failed to carry out such intention, and never

did, in fact, enter upon his official Assessment Book any assessment *upon the shares of stock, or on corporation stock.* The only assessment actually entered upon said Assessment Book, against plaintiff in error, was upon its *moneys and credits* entered on Assessment Roll, No. 6572, with the amount somewhat increased.

The State of Iowa has a Summary System of Taxation. Under this system, the assessment for taxation is made by an assessor, whose duties commence immediately after the second Monday in January of each year (Code of 1897, Sec. 1352). The first step in the assessment is made on what are respectively designated as "The Assessment Roll," and "Assessment Roll, Form 2," severally used for different kinds of personal property. (Code Supp. of 1902 Sec. 1360).

The Assessment Rolls are made out in original and duplicate, and the duplicate is signed by the Assessor, detached from the original and delivered to the person assessed. This constitutes his notice of assessment. (Ib.—Sec. 1360). The assessment is required to be completed by the assessor by the first day of April of each year. The statutory oath of the assessor is then attached to the assessment rolls. (Code of 1897—Sec. 1365).

The assessment rolls, thus verified, are then delivered to the local Board of Review—(Code of 1897—Sec, 1366). In a city the local Board of Review consists of the City Council, (Code of 1897-Sec. 1370), and it has power to confirm, correct, or, upon notice, add to the valuation of property, or assess additional property, and to hear complaints of any persons aggrieved by the action of the assessor. This Board of Review must complete its work not later than May 1st of each year. (Code of 1897—Sec. 1370; Code Supp. of 1902—Sec. 1371, 1372; Code of 1897—Sec. 1373).

The County Auditor is also required to deliver to each assessor two Assessment Books, which are thus delivered, together with the two sets of blank forms of Assessment Rolls, before the assessor commences his assessment.

When the review and revision of the assessments has been completed by the local Board of Review, the assessor is required to make up the two Assessor's Books, in duplicate, allowing a sufficient number of pages to each letter, and, when completed, he is required to deliver one completed Assessment Book to the City Clerk, and the other completed Assessment Book together with the Assessment rolls, to the County Auditor. (Code of 1897—Sec. 1366).

In practice, the Assessment Books are made up almost concurrently or *pari passu* with the making of the Assessment Rolls; and when these Rolls have been revised by the action of the local Board

of Review, the books are corrected to correspond with the changes made. They are then completed, and verified as corrected, by the assessor, and one of them is delivered to the county Auditor.

No claim is made, in the record before this court, that the Assessment Book returned by the assessor to the County Auditor, and the official Tax list subsequently made up therefrom by that official, were not correctly made.

There are statutory provisions for the equalization of values between townships, towns, and cities by the County Board of Review; between the several counties, by the State Board of Review, and for certifying the changes so made to the County Auditor. There are also statutory provisions for levies of taxes to be made by different bodies, and certified to the County Auditor. None of these provisions affect this case.

From these Assessment Books, certificates of equalization and certificates of levies, delivered to the County Auditor, that officer makes up the official Tax list, (Code Sec. 1383), which he is required to deliver to the County Treasurer on or before Dec. 31st of each year. (Code Sec. 1387). This tax list is, by statute sufficient warrant to authorize the collection of the taxes shown therein by distress and sale of personal property, (Code-1406-1407), or by sale of real estate by the County Treasurer in the presence of the County Auditor, in the manner provided by law. (Code Secs. 1418 to 1432).

The assessment in question, as carried onto the Tax list (above quoted) by the County Auditor and delivered to the Treasurer, is upon *personal property* of the Bank, of the taxable value of $14,700. The Assessment Book, (above quoted) assesses said bank on its *moneys and credits* in the sum of $58,783, having a taxable valuation of $14,696.00, and this was founded upon Assessment Roll No. 6572, upon *moneys and credits* of the bank, in a less sum, the amount having been increased when it was carried on to the assessment book, or by correction of said book, but no other change was made in this Assessment Roll, No. 6572, or in the Assessment Book.

On the official books or records relating to this assessment and taxation of plaintiff in error, there is not the slightest suggestion of any attempt to tax to the bank the corporate shares of stock in the hands of the individual shareholders, but the assessment is upon Bank *moneys and credits*, or Bank *personal property*.

The official record of the transactions, which the Board of Review is required to keep, by its clerk, (Code-Section 1371), states, that on Roll Call No. 329, the local Board of Review, upon the report of its committee to that effect, ordered that: "The assess-

" ment against the Home Savings Bank *stand approved* as made " by the assessor." (Trans. 16, lines 32-36). The report of the committee was: "We recommend that the assessment stand approved." (Trans. 16, Lines 29-30).

On appeal from the action of the Board of Review, taken to the State District Court, which was tried *de novo*, in equity, on the merits, the final decree dismissed the appeal at plaintiff's cost, (Trans. 19), thus affirming the assessment as made by the assessor, on the assessment book, and as carried on to the official tax list.

On the Appeal from the State District Court to the State Supreme Court, after a trial *de novo*, in equity, on the merits, the final judgment of the Supreme Court affirmed the judgment below, at the cost of the appellant, the Bank, (Trans. 22), thus again affirming the assessment as made by the assessor on the Assessment Book, and as carried on to the official Tax List.

The assessment, which was in fact made and thus affirmed was upon the *moneys and credits or personal property* of the corporation, not upon the *shares of stock*, in the hands of the shareholders.

But the *moneys and credits or personal property* of the Bank is that in which the capital or the capital stock of the bank is invested, all excess of moneys and credits being offset by debts to depositors, etc. The only *moneys and credits* returned by the bank was its *capital stock and surplus*. A tax on such moneys and credits or personal property is a tax on the capital or capital stock of the Bank, which included $32,675.00 of U. S. Bonds, exempt from taxation by the State. *People (N. Y.) vs. Tax Comm.*, 69 U. S., (2 Wall) 200, (17 Law 793).

In *Tennessee vs. Whitcomb*, 117 U. S., 129, (29 Law 831), the capital paid in was to be used in building and equipping a railroad. This court speaking through *Mr. Chief Justice Waite* said:

"In this way the capital of the corporation was to be converted " into the railroad and its appurtenances. A tax upon the railroad " therefore, after its completion, is necessarily a tax upon the cap- " ital, because practically the capital and that into which it has " been converted are the same." (Official page 135; Law page " 831—right column)."

The Supreme Court of Iowa did not expressly pass upon this point although it was directly presented by the record before that Court, (Trans. 21-22), but it was impossible to affirm the assessment complained of without deciding this point against appellant, (in that court), the plaintiff in error herein. In any view, the only assessment, which, in point of fact, was made and carried onto the Tax Books, and as to which there is no conflict in the rec-

ord, *was an assessment upon the capital stock of plaintiff in error,* without deducting the exempt United States bonds, and was in violation of the Constitution and Statutes of the United States, giving to the government the power to borrow money etc.

Section 1322 of the Iowa Code: This assessment purports to have been made under Code Sec. 1322. It was sustained by the State Supreme Court under said Sec. 1322. Plaintiff in error contends that the assessment itself, and the statute under which it was made and sustained are severally unconstitutional, as authorizing the taxation of bonds issued by the United States.

It is also settled law that the construction and interpretation of the statutes of a State by the highest court of that state are conclusive upon this court: 141 U. S. (35 Law 613); *Palace Car Co. vs. Pennsylvania*, 154 U. S., 421, (38 Law 1031); *Pittsburg R. Co. vs. Backus.* 166 U. S. 440 (41 Law 1069); *1st Nat. Bank vs. Chehalis Co.*

But the decisions of the State Court are not conclusive upon this court on the points, that the assessment actually made, and the law under which it was made and sustained, were not in violation of the U. S. Constitution and Statutes exempting U. S. Bonds from State taxation. These are Federal questions.

It was attempted to sustain the assessment actually made, because a valid assessment of similar or identical amount could have been predicated upon the value of the shares of stock in the hands of the shareholders. This is only an assertion of the doctrine of equivalency condemned by this court. Suppose the assessment had been based upon cattle and hogs, of which the bank owned none. Could such an assessment be sustained upon the theory that an assessment of equal amount could have been made upon the shares of stock held by the stockholders?

But plaintiff in error contends that the assessment, actually made, was upon the capital stock of the Bank, including that part thereof invested in U. S. Bonds, and the assessment complained of, and the State law authorizing such assessment, as sustained by the Iowa Supreme Court, are unconstitutional and void, in the respects stated.

That some other or different assessment might have been made which would have been valid and constitutional, does not validate the assessment actually made if that assessment was unconstitutional and void, even though the State Supreme Court affirmed the assessment which was, in fact, made.

In *Owensboro N. Bank vs. Owensboro*, (City) 173 U. S. 664, (43 Law 850), where the tax was assessed on the franchise and intangible property of a National Bank, and not upon the shares

of stock in the hands of the individual owners, the opinion by *Mr. Justice White*, said:—

"It is, however urged, that whilst the taxes may not be, in form "imposed on the shares of stock in the names of the shareholders, "and may be, in form, a tax upon the franchise or property of "the bank, nevertheless they are equivalent to a tax on the shares "of stock in the names of the shareholders, and therefore do not "violate the Act of Congress. But this proposition concedes that "the taxing Statute does not conform to the Act of Congress, "and yet invokes its permissive authority, since, as already shown, "without the grant made by the Act of Congress there would be "no power to tax at all. Passing, nevertheless, this contradiction, "and looking beneath the mere form, we come to the substance "of things." (Official page 676; Law page 855 right column). * "It is unnecessary to multiply citations on this subject, as the "question has been in recent cases reviewed and re-stated fully "by this court. Thus, in *Bank of Commerce vs. Tennessee*, 161 "U. S. 146 (40 Law 649), it was said, through *Mr. Justice Peck-"ham*: 'The capital stock of a corporation and the shares into "which such stock may be divided and held by individual stock-"holders, are two distinct pieces of property. The capital stock "and the shares of stock in the hands of the shareholders may "both be taxed, and it is not double taxation.' (Official page 681; "Law page 857—right column). * There being no equivalency "between the assessment of the bank and the assessment of the "shares in the names of the shareholders, it follows that the tax "here complained of, which was assessed on the franchise or in-"tangible property of the corporation, was not within the pur-"view of the authority conferred by the Act of Congress, and "was therefore illegal. (Official Page 682; Law page 588-left "col.)".

It is clear that the assessment in fact made upon the *moneys and credits* of plaintiff in error, in the case at bar, cannot be sustained on the doctrine of the alleged equivalency of the taxation.

The legal effect of the Assessment actually made. Conceding, for the purpose of argument only, that the assessment was in form upon the "shares of stock" and not upon the "moneys and credits" or "personal property" (the capital) of the bank, the legal effect or result is the same.

In *City of New Orleans vs. Houston*, 119 U. S. 265, (30 Law 415), the legislature of the State of Louisiana passed a law (Act No. 25 of the year 1868), organizing the Louisiana State Lottery Company, requiring said company to pay, as taxes, $40,000 per annum, to the State of Louisiana, and exempting it from all

other taxes and licenses of any kind whatever assessed by the State, parish or municipal authorities. Sections 4 and 5 of this Act gave this company certain monopoly rights and privileges. This incorporating Act was repealed by a subsequent Act of the Legislature. (Act No. 44, approved March 27, 1879). Thereafter the Constitution of that State was amended, in December 1879, and Article 167 thereof revived the charter of the Lottery Company, and recognized it as a contract binding on the State, except as to its monopoly clause, which was abrogated. By virtue of another Act of the legislature the municipal taxing authorities were about to levy a tax upon the capital stock of the Lottery Company and upon the shares of stock held by the shareholders of said company. After submission of the case, a decree was passed whereby the imposition of such a tax was enjoined by the U. S. Circuit Court.

In this court the decree was affirmed. The Lottery Company was held exempt from this taxation. But it was also claimed by the appellant, (City) that the exemption did not extend to the shareholders of stock of the Lottery Company, on account of their shares of its capital stock held by them as individuals. It therefore became necessary for this Court to examine into the essential features of the law imposing the tax, so as to determine whether the tax was, in reality, *one upon the Corporation or one imposed upon the shareholders.*

After stating the well settled propositions that the property of shareholders in their shares, and the property of the corporation in its capital stock, are distinct property interests, and, where that is the legislative intent, clearly expressed, that both may be taxed. (Official page 277, Law 415—left col.—,) the opinion, by *Mr. Justice Matthews,* said:

"In the present case the Corporation is exempted by its charter "from all other taxes and licenses of any kind whatever in excess "of the sum of $40,000 per annum, and yet by act No. 77, though "*the assessment is not to be made upon its capital stock, but upon* "*the shares of shareholders* appearing upon its books, nevertheless, "the tax so assessed it is to be *paid by the Company*, although it is "entitled to collect the amount so paid from the shareholder on "whose account it is payable: but this payment by the Company "is to be made *irrespective of any dividends or profits* payable to "the share holders out of which it might be paid. That it is sub"stantially a tax *upon the corporation itself,* is unequivocally "shown by the subsequent clause, which authorizes a deduction "from the amount of taxes assessed to each share, of its propor"tion of the direct taxes paid by the Company as such under Sec"tions 1 and 3, and of all exempt property belonging to the cor"poration. But as all the property of the Louisiana State Lottery

" Company is exempt from taxes after payment of the annual sum " of $40,000, nothing remains to be charged as a tax upon the " shareholder as distinct from the Corporation under the provisions " of this section. Indeed, it is quite apparent from the language " of the whole section, that, *while nominally the taxes authorized* " *are not to be assessed upon the capital stock* of the corporation " in the aggregate and as its property, *yet in substance that is its* " *effect. The taxes are assessed upon the actual shares as registered* " *in the names of individual shareholders but are to be paid by* " *the Corporation*, so that while the form and mode of taxation is " changed, its substance remains as though assessed against the Cor- " poration by name."

"The case differs altogether from that of *U. S. vs. R. R. Co.*, " 17 Wall. 322, (84 U. S. 21 Law 597), in which it was held that " the tax provided for in the 122d section of the Internal Revenue " Act of 1864, as amended, requiring railroad and other corpora- " tions to pay a tax upon interest and dividends payable by them, " with the right to deduct the same from the amounts otherwise due " to creditors and stockholders, was a tax upon the latter and not " upon the corporation, because the corporation was made use of " merely as a convenient means of collecting the tax, and it cannot " be considered as ultimately a tax upon the shares, as the prop- " erty of the shareholders, within the principle of the decision in " *Nat. Bank v. Commonwealth*, 9 Wall. 353 (77 U. S. bk. 19, L. " ed. 701.) There the Act of Congress expressly distinguished " between the taxing of the bank and the taxing of its shareholders " on account of their shares, and, as was held in that case, left it " open to the state to collect the tax levied on the shares by impos- " ing the duty of collecting it upon the Corporation. That, we " think, is prohibited in this case by the terms of the contract con- " tained in the charter, which exempts the corporation from the " payment of all taxes whatever in excess of the specified annual " sum, whether levied on it or to be paid by it on any account what- " ever. A tax such as that sought to be imposed upon the com- " pany by the appellees *is a tax upon the corporation* within the " meaning of the prohibition of its charter, *because it is compelled* " *to become surety for taxes nominally imposed upon its stock-* " *holders, and is made liable primarily for their payment;* a pay- " ment which, in the first instance, must be made out of the cor- " porate property, without other recourse than an action against " individual stockholders to recover the amounts advanced on their " account." (Official Pages 278-280; Law pages 415-416)."

In the cited case, the property of the Lottery Company was all exempt from taxation under the State Constitution. In the case at bar the capital stock of plaintiff in error, so far as invested in

U. S. Bonds, was exempt from taxation under the U. S. Constitution and statutes. In each case the property exempt from taxation was and is alone involved in the controversy.

In the cited case, the assessment purported to be upon the *shares of stock*. In the case at bar, the assessment is upon the *moneys and credits*, of the Bank, less the value of real estate otherwise assessed, and the same does not purport to be assessed upon the shares in the hands of the shareholders, although the claim is made that the tax is upon the shares, notwithstanding the assessment is against the corporation.

In the cited case, a right of recovery of the tax by the corporation from the shareholder was given by statute. In the case at bar there is no such right of recovery given to the Banks, of which plaintiff in error is one.

By the statutes of Iowa, set out at the commencement of this division of our brief, for the purpose of the assessment for taxation of shares of stock of corporations, such corporations are divided into two classes. The first class is where the shares of stock are assessed to the individual stockholders, at the principal place of business of the corporation, including National Banks; (Code of 1897—Section 1322), and also including all corporations organized under the laws of Iowa, except those otherwise provided for by law.' (Code of 1897—Section 1323). The second class includes State and Savings Banks and Loan & Trust Companies, being the corporations, above referred to as 'otherwise provided for by law' whose shares of stock are to be assessed to said Banks or Companies 'and not to the individual stockholders.' (Code of 1897—Section 1322).

As to the corporations whose shares of stock are assessed to the shareholders, Code of 1897—Section 1325 provides:—"The corporations described in the preceding sections shall be liable for the payment of the taxes assessed to the stockholders of such corporations," with provisions as to the payment to and collection by the State, of the tax from the corporation. The statute further gives to "such corporations" the right to recover from the stockholder his share of the tax paid by such corporation, and creates a lien in favor of such corporation, on the stock and dividends of said stockholder, with a provision to enforce such lien by a sale thereof by the sheriff after notice by registered mail as provided in said statute.

This right of recoupment is limited to the Corporations whose shares are assessed to the stockholders. There is no such right of recovery or lien given or created in favor of Savings Banks, (including plaintiff in error), or of State Banks and Loan & Trust

Companies, to which the shares of stock of their stockholders are assessed, which shares, the law expressly says. shall not be assessed to the individual stockholders. The liability of the Bank is primary, without right of recoupment from its stockholders, and without regard to any dividends or property which may be in, or come into, its possession or under its control, and, in the case at bar, under an assessment expressly made on the moneys and credits of the bank, without deducting its U. S. Bonds.

We have already suggested that the present doctrine of the Iowa Court is based upon a change, real or fancied, in the legislation of the State. Let us examine the old and the new statutes and inquire if they warrant final judgments contradictory of, and diametrically opposed to, each other.

The old statute is Chap. 29, Acts of 23rd Gen. A., and provides as follows:

"*All shares* of the capital stock of banking associations organi-
" zed under the general incorporation laws of this state, known
" as state or commerical banks, *shall be assessed to such banks*, in
" the city or town where located and not to the individual share-
" holders."

In 1895, and under this statute, the Iowa Court decided the case of *Ottumwa Savings Bank vs. Ottumwa*, 95 Iowa 176, following and approving *German American Savings Bank, vs. Burlington*, (1880) 54 Iowa, 609, and *Campbell vs. Centerville*, (1886), 69 Iowa, 439, in all of which three cases it was held that the capital of a bank, in so far as it is was invested in U. S. Bonds, was exempt from taxation because of Federal law. As before stated, these holdings were also in harmony with the decisions of this Court on the same subject.

The new statute, Sec. 1322, of the Code of 1897, provides as follows:

"*Shares of stock* of state and Savings Banks, and loan and trust
" companies, *shall be assessed to such banks* and loan and trust
" companies, and not to the individual stockholders."

Under this statute the Iowa Court has held in the instant case that in assessing *to the bank* the shares of its stock, no deduction shall be made because of its capital being invested, in whole or in part, in U. S. Bonds.

Bringing these two statutes into juxtaposition and scanning them carefully, we see that the old provides for the taxation of "all shares of the capital stock" and the new provides for the taxation of "shares of stock." Of course, the phrase "shares of stock" in the new statute has reference to shares of the capital stock of the bank. No one would claim that shares of stock in other cor-

porations, owned by the stockholders of a bank, should be assessed to the bank. We observe then that both statutes deal with the same subject matter, to-wit: *shares of stock of the capital* of a bank.

It is next provided in both of the statutes that such shares "*shall be assessed to such banks.*" In this respect there is no difference, not only in the spirit of the enactments, but in their verbiage as well.

Again the old statute provides that the shares of stock shall not be assessed "to the individual shareholders," whereas the new statute provides that the shares of stock shall not be assessed "to the individual stockholders."

We submit with great confidence that there has been no change in the legislation of the State. The two statutes are identical in spirit and effect. The old one is in the language of the legislature of the State, ordinarily expressed. The other is the language of the Code commissioners whose duty it was to arrange and codify the law without making any change, and who in their report say that a change in the language is not intended to imply a change in the law. Beginning with the last paragraph on page 3 of the report of the code commissioners, we find the following:

"It must be distinctly understood that a change of language does "not necessarily indicate any intention to change the meaning of "the law. The Commission is authorized to rewrite the sections "of the Code and statutes for the purpose of improving the ex- "pression of the law and it has faithfully done so."

Since there has been no change in the legislation of the State, the decree of the Iowa Court in the instant case not only overrules its own earlier decisions, but puts it in hostility to the decisions of this court. By reversing said decree, the Iowa Court will be restored to harmony with itself as well as harmony with this court. If there had been new legislation to the effect that the shares of stock, should be taxed to the shareholders, but that the tax should be paid by the bank out of property in its hands belonging to the shareholders, being the Iowa mode of assessing and collecting taxes on the shares of National Banks, if the bank were simply made the agent of the State for the collecting of the taxes, and was furnished with full measures for indemnification against the shareholders or recoupment for taxes paid by it for them the situation might be different; though we submit that even in such case there would be no substantial difference.

In other words, assessing the shares of the capital of the bank to the bank, and making it liable for the payment of the taxes, reduces the property of the bank, to-wit: its capital and profits, by so much as is used in paying the taxes; and by the same amount, divi-

dends payable to the shareholders are reduced. If the *shares of stock* belonging to the shareholders are taxed, either to the bank or the shareholders, *and the bank made primarily liable* for the payment of the tax, then precisely the same result follows. The property of the bank to-wit: its capital and profits, is reduced precisely as before, and the dividends payable to the stockholders are correspondingly reduced. In yet other words, while it is true that the capital of the bank belongs to the bank, yet in a certain well defined sense, that same capital belongs to the shareholders. Upon retiring from business, after the payment of creditors, it is returned to the shareholders for the very reason that it belongs to them. Refine upon the subject as we may, we submit there is no escape from the conclusion that whether the tax is levied upon *the capital*, or upon the *shares of stock*, the result, both to the bank and the stock holders, is the same. This being true, we submit there is no substantial reason for holding that if the tax is assessed upon *the capital*, the government bonds shall be deducted; but if it is assessed upon the *shares of stock*, the bonds shall not be deducted.

It is possible that we exhibit an unusual degree of temerity in taking this position. It is also possible that in some cases, courts have attempted to define a difference between taxation of *capital* and taxation of *shares of capital*. In many of the cases we find expressions falling from the judges that indicate that they are not fully satisfied there is any real difference between the two, as it seems to us there is not.

We suggest further that we are now in a Court of Equity, where forms and shadows must give way to substance—a forum which endeavors to get at the very right of the matter. It is conceded on all hands that if the capital of the bank is taxed, the amount thereof invested in Government Bonds must be deducted. It is claimed, however, by defendants in error that if, nominally, the shares of stock are taxed. *though directly to the bank*, as claimed in this case then and in such case, the amount of the capital of the bank invested in Government Bonds is not to be deducted. We respectfully submit that herein we have an example of legal differentiation which is strangely foreign to proceedings in a court of Equity. It is a proposition or theorem in geometry that things which are equal to the same thing are equal to each other. The same proposition or theorem holds good in law, particularly in a court of Equity. Whether the tax be levied upon the capital of the bank, or upon the shares of stock, the result is identically the same, both to the bank and its shareholders. This cannot be gainsaid. This being true, there should be no deduction for Government bonds in either case, or there should be the same deduction in both cases.

Deduction of debts from value of credits: The decree complained of runs against another difficulty and inequity. These statutes are so framed that the Bank is primarily liable for, and must pay the full amount of, the tax without deduction, although the individual stockholder may be entitled to a deduction, in making up the assessment of the value of his shares of stock. We take it to be the law that the Bank, in any event, could not recoup or recover from any of its shareholders any sum in excess of that which the shareholder could have been legally assessed with, if he had given or listed his own shares for assessment for taxation; and any sum which the Bank is required to pay, in excess of that which the shareholder could have been legally required to pay, is a direct tax on the bank capital or capital stock, including the U. S. Bonds in which any part of such capital is invested, and is not a tax on the shareholder.

Code of Iowa (1897), Section 1311, provides:

"In making up the amount of money or credits which any per-
"son is required to list, or to have listed, or assessed, including the
"actual value of any Building and Loan shares, he will be entitled
"to deduct from the actual value thereof, the gross amount of all
"debts in good faith owing by him."

Code of Iowa, (1897) Section 1361, as amended in 1898 by Chap. 30, of the Acts of the 27th General Assembly, relating to the making out of an assessment Roll, Form No. 2, provides that the person, (natural or artificial) making the same "shall enter and set out such liabilities as they claim should be deducted from the total of their moneys and credits." (Code Supp. of 1902—Sec. 1361).

We regard it as settled law, in Iowa, that shares of stock in National Banks are 'credits,' within the meaning of the statutes of the state relating to taxation, and the shareholder is entitled to deduct his just debts from the value of such shares when the same are assessed for taxation. *Redhead v. Iowa N. Bk.;* 103 N. W. (Iowa), 796. *Primghar St. Bank vs. Rerick*, 96 Iowa 241, 242. *First National Bk. (Albia) v. City Council*, 86 Iowa 34. *Richards v. Rock Rapids;* 31 Fed., (CC-ND), 505, 512.

As to the deduction of debts from the value of shares of stock. *other than those of National Banks*, the decisions of the Iowa Supreme Court are as follows:

In *Bridgman v. Keokuk*, 72 Iowa, 42, decided in June 1887, the Supreme Court held, that shares of stock in a building and loan association, were not 'credits,' from the value of which the owner was entitled to deduct his 'debts.' when listing for taxation his shares of stock in such association. The principles upon which

the case rested, were that the owner of the shares had an equitable interest in the property of the corporation, and that the relation of debtor and creditor did not exist between the corporation and the stockholders. The statute however has since been amended. Building and Loan shares are now "credits" from which deductions may be made. (See Sec. 1311, *supra*).

The relation of the corporation to its stockholders, as debtor and creditor, again came up and was considered, by the Supreme Court of Iowa in the case of *Equitable Life Ins. Co. v. Board of Equalization*, 74 Iowa, 178, finally decided in March 1888, both parties appealing. This case, on first submission, was affirmed on plaintiff's appeal and reversed on defendant's appeal; but, on rehearing the case was reversed on plaintiff's appeal and affirmed on defendant's appeal. The original opinion in this case was handed down March 14th, 1887, (32 N. W. 376), some three months before the decision of the "Bridgman" case and was doubtless considered as authority when the 'Bridgman' case was decided, prior to the granting of the rehearing in this case.

The precise point involved was whether the amount coming to the stockholder from the corporation, was a 'debt' which the corporation was entitled to deduct from its 'credits' when listing them for taxation, and the final decision was that this amount was a 'debt', and the corporation was entitled to deduct the same from its 'credits' upon which it was liable for taxation.

The language used by the Court, through *Beck, J.*, is as follows:—

"The corporation being bound to pay the stockholders, its obli-
" gation so to do creates a 'debt' according to the definitions above
" given. It should, therefore, be deducted from the amount of
" the moneys and 'credits' in listing the same for taxation." (Page
" 182). "Our conclusion is that the amount owing the stock-
" holders, in the sense of the expression which accords with what
" we have said,—that is, the amount which the stockholder would
" be entitled to receive upon a present distribution of the money
" and credits of the corporation should be deducted from such
" moneys and credits of the corporation in listing them for taxa-
" tion." (Page 183—Par. VI).

In *First N. Bk. (Albia) v. City Council*, 86 Iowa, 28, decided in 1892, the question was whether shares of stock in a National Bank are 'credits' from the value of which the owner of the stock may deduct his 'debts' when listing the shares for taxation, and the holding was that they were such 'credits.' The case is fully considered as to shares of stock generally, both from the standpoint of the State statutes, and of the decisions of this court.

The Court, in its opinion by *Kinne, J.*, quoted in full, Section 1309, as follows:

"The term credit, as used in this chapter, includes every claim "or demand, due or to become due, for money, labor or other val- "uable thing, every annuity or sum of money receivable at stated "periods and all money or property of any kind secured by deed, "title, bond, mortgage or otherwise; but pensions of the United "States or any of them, or salaries or payments expected for ser- "vices to be rendered, are not included in the above term."

The conclusion of the Court, as to the construction to be given to the word 'credit' in this state statute, is thus stated in the opinion:

"We are clear that the logical result of the reasoning in the "*Equitable Life* case, above referred to, leads to the conclusion "that the stock held in the bank by O. D. Lockman and J. J. Drake, "respectively, was a 'credit' and they should be permitted to de- "duct their respective indebtedness therefrom. This conclusion "is not only satisfactory to us, *but also conforms the holdings of "this Court to the doctrine announced by the federal courts as ap- "plicable to stock in National Banks.* It would seem, if possible to "do so without doing violence to our statutes, the same rule as to "deducting debts from bank stocks should obtain as to banks, "*whether national or otherwise.*" (Page 36).

The opinion, then considered the power to tax National Banks, as derived from the Act of Congress, Rev. S. U. S., Section 5219, under the decisions of this Court, and the meaning of the word 'credits' as announced by other State Courts. On the subject of 'credits' and the deduction of 'debts' therefrom the opinion cited the following cases decided by this court: *Hepburn v. School Directors*, 90 U. S., (23 Wall.) 480, (23 Law 112), *People* (N. Y.) *v. Weaver*, 100 U. S., 539, (25 Law 705). *Cummings v. Nat. Bank*, 101 U. S. 153, (25 Law 903). *Supervisors* (N. Y.) *v. Stanley*, 105 U. S. 305, (26 Law 1044). *Evansville Bk. v. Britton*, 105 U. S., 322, (26 Law 1053). *Boyer v. Boyer*, 113 U. S., 689, (28 Law 1089).

The opinion, (Page 39), quoted from the "Hepburn" case in part as follows:

"Second: That a State which permits individual citizens to "deduct their just debts from the valuation of their personal prop- "erty of every kind, other than national bank shares, or which per- "mits the tax payer to deduct from the sum of his 'credits' at in- "terest or other demands to the extent of his *bona fide* indebted- "ness, leaving the remainder to be taxed, while it denies the same

" right of deduction from the cash value of bank shares, operates to " tax the latter at a greater rate than other moneyed capital."

The conclusion reached on the Federal branch of the case, was thus stated in the opinion:

"In view of these decisions by the Supreme Court of the United " States, it is clear that the holder of this stock must be placed in " the same position of advantage, with reference to the right to " deduct from the cash value of his stock his *bona fide* indebted- " ness, as the individual who owns no stock in any such corpora- " tion, but who has other 'moneys and credits'. In any event, we " would not be justified, in the light of the adjudications, in decid- " ing this case in accordance with the contention of the appellee, " *and thereby placing this Court in an attitude of hostility to the* " *decisions of the United States Supreme Court on a federal ques-* " *tion.* (Page 40)".

This *First Nat. Bank of Albia* case seems to decide, as plainly and clearly as language can speak, that, for taxation purposes, a share of stock is a 'credit' under the proper construction of the State statutes, and that the stockholders in banks, *whether National or otherwise*, are entitled to deduct their debts from the value thereof; that under the decisions of this court, they are also 'credits' for purposes of taxation; from the value of which the 'debts' of the shareholders of national bank stock may be deducted; that the conclusions as to the meaning of the word 'credit' under the State law is the more persuasively reached because it harmonizes the State and Federal decisions as to shares of stock being 'credits' for the purposes of taxation and deducting just debts therefrom.

We submit, therefor, that as to the meaning of the word 'credits' as including shares of stock of banks, 'whether national or otherwise', this was settled in 1892 in the case of *First Nat. Bank of Albia vs. City Council*, 86 Iowa 28, cited supra, and no decision has been made since that time, questioning or overruling the doctrine established in that case.

Under the rule established in the *First National Bank of Albia*, case, cited supra, the 'debt' of the corporation is a 'credit' on the part of the shareholder, for purposes of taxation, from which the shareholder may deduct his 'debts'. This ruling, as stated in that case, is also in harmony with the decisions of this court on the same subject.

This construction of the Iowa statutes is reasonable in itself, fair in securing like treatment to all banks, and is in harmony with the general law and the holdings of this court.

But if the deduction of 'debts' from shares of stock, as 'credits' is allowed, the statute, under which the assessment for taxation in question was made, establishes a liability of the bank which is a primary liability on its capital, including that part invested in U. S. Bonds, without any possibility of recoupment, from the shareholder, to the extent of the debts of the shareholder.

In any event, plaintiff in error claims that the assessment, as actually made, the legal effect of the assessment as made, and the legal effect of the statute held to authorize the assessment as made, is to impose a tax on the capital or capital stock of plaintiff in error, without deducting the part thereof invested in United States bonds, all of the same being in contravention of the U. S. Constitution and Statutes, and of the decisions of this court, on this subject.

DIVISION 4.

Congress alone has legislative power or jurisdiction to authorize or permit taxation, by any State, directly or indirectly of the bonds or other securities issued by the United States, or of the beneficial ownership thereof. The State has no power or jurisdiction over this subject matter, without express authority of, or permission from, Congress, authorizing the state to exercise such taxing power or jurisdiction. No such permission has been given by Congress.

The power and jurisdiction of a State to assess a tax upon shares of stock of a private corporation, organized under the laws of the State, notwithstanding that the capital of such corporation, or some part thereof, is invested in Bonds or other Securities of the United States, was, as to the points presented and decided, passed upon so recently by this Court, in the case of *Cleveland Trust Company vs. Lander, Treasurer*, (Ohio), 184 U. S. 111, (46 Law 456), that, under ordinary circumstances, we should deem the question settled law.

But, as it appears to us, the able and distinguished counsel for plaintiff in error, in the cited case, failed to present what we deem the fundamental and vital Federal question which lies at the root of the whole matter. We therefore, respectfully ask permission to state and succinctly present our contentions, before that case is considered as settling the law, on this subject.

We understand that it is the province of this court, in cases coming here, in error, to the highest court of the State, to consider and pass upon those Federal questions only which are duly presented in the record, and not to originate and decide questions not presented by the record, unless they affect the jurisdiction of

this Court to entertain the writ of error. The question now presented is, in our opinion, a new one, not heretofore brought up or determined by this Court. We are unable to find any case, decided by this Court, prior to the *'Cleveland Trust Company'* case, cited *supra, which involved the taxation of shares of stock of a State corporation*, where some or all of the capital of such corporation was invested in Federal Securities.

It is our claim that Congress alone has legislative power or jurisdiction to give or grant to a State, the right; directly or indirectly, to tax Federal bonds or securities. The State has and can have no power or jurisdiction, legislative, judicial or executive, over this subject matter, except under the express *affirmative* authority or permission of Congress.

We further contend, that so far as any questions of policy are concerned in this matter, they are Federal *legislative* questions, which Congress alone can establish or determine; and when so established or determined, the action of Congress, on this legislative question, is conclusive upon the Courts.

It is settled law that Congress has power to authorize or permit a State to assess a tax on the shares of stock in the hands of the shareholders of a corporation, organized under an act of Congress, as an instrumentality or means of carrying on or conducting some of the operations of the Government. (such as a National Bank, as established in the National Banking Act of 1864), without deducting from the value of such shares the value of the whole or any part of the capital of the corporation, invested in U. S. Bonds or other U. S. Securities. *Van Allen vs. Assessors*, (N. Y.), 70 U. S. (3 Wall) 573, (18 Law 229), and numerous subsequent cases citing and following the *'Van Allen'* case.

Stated in a practical way, the points involved, in this branch of the present case, are these: While leaving, just as it is, the power of the State to assess for taxation, shares of stock of a National Bank, in the hands of the shareholder, has Congress the power or legislative jurisdiction to so frame its legislation that shares of stock, in the hands of a shareholder, *of a corporation organized under the laws of a State*, shall not be, directly or indirectly, subject to taxation, by the State, to the extent that the capital of such state corporation, is invested in U. S. Bonds or other Securities? If Congress possesses this power, has it so legislated?

Our contention is that Congress has this power; that this is a Federal legislative question which Congress alone can determine; and that Congress, in framing the National Banking Act, and its other legislation, has exercised this power. Its determination of

this Federal legislative question is binding and conclusive on the Courts, including this tribunal.

We will refer a little later on to the wisdom or necessity for Congress establishing such a legislative policy; we are now concerned with the power or jurisdiction of Congress, over this subject.

It will be readily seen that the *Van Allen* case cited *supra* is predicated or based upon the following propositions;

1. The right to tax a private corporation, or its franchises, or property, or its shares of stock, does not exist on the part of a State, if the corporation was organized by Congress as a means or instrumentality of carrying on some operation of the Government, *unless* such right or power to tax is expressly given by act of Congress.

2. The power or jurisdiction, of any State, to assess for taxation, *directly or indirectly* any Federal bonds or Securities, does not exist, unless such right or power to tax is expressly given by Act of Congress.

3. The power or jurisdiction to separate the property of a private corporation, in the capital or capital stock paid in, or that in which the capital is invested, from the property of the shareholder in the shares of stock of such corporation, in the hands of the shareholder, and the power or jurisdiction to assess for taxation these different properties, are *legislative* questions to be determined by the Legislative power, National and State. Congress determines these questions as to private corporations, such as National Banks, organized by Congress as governmental instrumentalities. The State legislature of a particular State, determines these questions as to State private corporations, so far as the State has power and jurisdiction over the franchises or property of such corporations, and the shares of stock issued by such corporations.

The right or power of the State to tax shares of stock in the hands of the individual shareholders, where the capital of the corporations, or part thereof, is invested in Federal securities, is distinctly negatived, in the *Van Allen* case, to the extent of such investment in Federal securities, *except by permission of Congress*, which had been affirmatively granted as to National Banks only in the National Banking Act. This prohibition upon the State's power of taxation rests upon a ground similar to, but entirely separate and distinct from, the prohibition upon its power to tax a means or instrumentality of carrying on the operations of the Federal Goverment, although each arises from the U. S. Constitution.

We state the question, in this case, not involved or decided in the *'Van Allen'* case, as follows: What is the power of Congress

over the taxation of shares of stock of a State corporation, in the hands of the shareholder, where all or part of the capital of such State corporation is invested in U. S. Bonds or other U. S. Securities?

The first of the propositions above enumerated, as to the taxation of an instrumentality of the government, can arise only where the private corporation was organized under an Act of Congress and therefore, does not arise in this case.

The second of these propositions, that the *permission of Congress is necessary to authorize a State to tax Federal securities* is settled law. It falls within the principle of the immunity of the national authority from State taxation, whether it be in the operations of the Government, or the instrumentalities created by the Constitution or by Federal Statutes, or the Securities lawfully issued under the authority of Congress.

Thus, in *Owensboro National Bank vs. Owensboro,* 173 U. S. 668, (43 Law 852), *Mr. Justice White,* speaking for the court, said:

"It follows then necessarily from these conclusions that the re-
" spective States would be *wholly without power* to levy any tax,
" either *direct or indirect,* upon the national banks, their property,
" assets, or franchises, were it not for the *permissive legislation* of
" Congress."

In the first of the Government securities cases, *Weston vs. City Council,* 27 U. S. (2 Pet) 449, (7 Law 481), the city of Charleston imposed a municipal tax on stock of the United States. The case came here, in error, to the Constitutional Court of South Carolina. The opinion of this court, handed down by *Mr. Chief Justice Marshall,* took up the prior case of *McCulloch vs. Maryland,* (4 Wheaton 316), and in relation thereto said:

"We retain the opinions which were then expressed. A con-
" tract made by the government in the exercise of its power, to
" borrow money on the credit of the United States, *is undoubt-*
" *edly independent of the will of any State in which the individ-*
" *ual who lends may reside,* and is undoubtedly an operation es-
" sential to the important objects for which the government was
" created. It ought, therefore, on the principles settled in the case
" of *McCulloch vs. The State of Maryland,* to be exempt from
" State taxation, *and consequently from being taxed by corpor-*
" *ations deriving their power from States.* It is admitted that the
" power of the government to borrow money cannot be directly
" opposed, and that any law directly obstructing its operation would
" be void; but a distinction is taken between direct opposition and
" those measures which may consequentially affect it; that is that a

"law prohibiting loans to the United States would be void, but a "tax on them to any amount is allowable. It is, we think, impos- "sible not to perceive the intimate connection which exists between "these two modes of acting on the subject. (Official Pages 467- "468; Law page 488--left column). The tax on goverment stock "is thought by this court to be a tax on the contract, a tax on the "power to borrow money on the credit of the United States, and "consequently to be repugnant to the Constitution." (Official Page 469; Law Page 488-right column).

The case was reversed on the ground "that the said Constitutional Court adjudged that the said ordinance was not repugnant to the Constitution of the United States; whereas, this court is of the opinion that such repugnancy does exist."

As this case has been uniformly followed by this Court, the principles announced therein are settled law, and do not require the citation of additional authorities.

On the subject of the permission given by Congress for States to tax an instrumentality of the government established by Congress, or to tax Federal securities, this Court has also established the law on those points in its prior decisions.

In the *'Van Allen'* case, 70 U. S. (3 Wall) 573, (18 Law 229), the opinion by *Mr. Justice Nelson*, said:

"It is said that Congress possesses no power to confer upon a "State authority to be exercised which has been exclusively dele- "gated to that body by the Constitution, and consequently, that it "cannot confer upon a State the sovereign right of taxation; nor "is a State competent to receive a grant of any such power from "Congress. We agree to this. But as it respects a subject matter "over which Congress and the States may exercise a concurrent "power, *but from the exercise of which Congress, by reason of "its paramount authority, may exclude the States*, there is no "doubt Congress may withhold the exercise of that authority and "leave the States free to act." (Official page 585; Law page 235- left column).

In *Cleveland Trust Co. vs. Lander*, 184 U. S. 114, (46 Law 458), the opinion, by *Mr. Justice McKenna*, concerning the *'Van Allen'* case said:

"The validity of the statute, (National Banking Act), was "sustained, and, interpreting it, the court said, that it authorized "the taxation of such shares, (in a National Bank), and shares "were defined to be the whole interest of the holders without "diminution on account of the kind of property which consti- "tuted the capital stock of the bank." Official page 114; Law page 458-right column).

The power of Congress is also established, in the *'Van Allen'* case, to differentiate, for purpose of taxation, between the property of *the National Bank* in the capital paid in, or the property in which that capital is invested, and the property rights *of the individual shareholders* in or to the shares of stock in their hands, and to authorize the taxation by the State of these shares in the hands of the shareholders, although the capital was invested, in whole or in part, in U. S. Securities, while maintaining the constitutional exemption from state taxation of the capital of the Bank, as a governmental instrumentality, and also as to such part of the capital as was invested in government Securities.

In other words, the subjects being within the paramount jurisdiction of congress, *the State government could only exercise its taxing powers just so far as Congress permitted, and no further.*

The power of the State for purpose of taxation, to make a similar differentiation between the capital stock owned by the corporation, and the shares of stock owned by the individual shareholders, is also well settled; but there is nothing in any of the cases decided on this point, by this Court, that in any manner limits or restricts the effect of the U. S. Constitution upon, or the power of Congress over, the securities of the United States; or which in any manner extends the powers of the State. legislative or judicial, over such Federal securities, except by permission of Congress. *Cleveland Trust Co. vs. Lander;* 184 U. S. 111 (46 Law 456); *Corry vs. Baltimore;* 196 U. S. 466, (49 Law 556), *Tennessee vs. Whitworth;* 117 U. S. 135, (29 Law 831).

In considering a claim of exemption of shares of stock of a Railway corporation, organized under the laws of Tennessee, this court, in *Tennessee vs. Whitworth,* 117 U. S. 135, 136, (29 Law 831, 832), speaking through *Mr. Chief Justice Waite,* said:

"It is no doubt true that *the legislature* may make a difference, "for the purpose of taxation, between the capital stock of a cor- "poration, and the shares of the same capital stock in the hands of "the individual stockholders. That has often been done, and the "cases are numerous where the exemption of shares from taxation "has been claimed because of a charter exemption of the capital "stock. Notably this was the case with the National Banks. The "capital stock of such banks invested in United States Securities "is not taxable by the States; but shares of the stock in the "hands of the individual stockholders may be taxed with- "out deduction on account of such an investment. This "has been held from the beginning. (Citing cases). The "capital stock in the hands of the bank is exempt, be- "cause invested in securities which are not to be taxed, Rev. "Stat. Sec. 3701, but the shares in the hands of the stockholders

"are by the very terms of the banking act, put, for the purposes "of State taxation, on the same footing as other moneyed capital. "Rev. Stat. Section 5219. This, it was said, *showed the intention "of Congress* to exempt the bank for what was invested in govern- "ment securities, but *to charge the stockholder.*" (Official pages 135-136, Law pages 831-832).

It is clear that the question is purely legislative, resting, in part, as to State corporations, upon the statutes adopted by the State legislature, within its jurisdiction, and, in part, upon the legislation of Congress; while as to Federal instrumentalities or securities, it rests primarily upon permission granted by Congress, followed by State Statutes authorizing an assessment by the State of those taxes which Congress has authorized to be assessed.

But there is no mixing or confusing of these jurisdictions. The State can do nothing of its own power, which will authorize it, directly, or indirectly, to tax Federal securities or instrumentalities. The powers of the State to tax either Federal securities or Federal instrumentalities, must come from the affirmative act of Congress, granting permission so to do.

No Act of Congress is necessary to prohibit or prevent the State from taxing Federal securities or instrumentalities. This prohibition is Constitutional.

In *Lionberger vs. Rowse*, 76 U. S. (9 Wall) 468, (19 Law 701), there were ten State Banks in the State of Missouri, which were required to pay a tax of one per cent upon the amount of capital stock paid in, in full compensation for all taxes of every kind, whatsoever. After the National Banking Act was passed, there was legislation enacted by the State to facilitate the reorganization of these State banks as National banks. Eight of the ten Banks became National Banks, the other two remaining State Banks. Under subsequent legislation, a tax was assessed on one of the reorganized National Banks, equivalent to about two per cent on its paid up capital. It was claimed that this taxation was in violation of the power to tax, given to the State by the National Banking Act.

The opinion of this court, delivered by *Mr. Justice Davis* said:

"Two of them declined the proposition tendered by the State and "are still doing business in St. Louis. There is no way the State "could compel them to relinquish their charters, nor has it the "power to tax their shareholders on their shares of stock. Hav- "ing contracted with these banks to accept from them annually, in "lieu of all taxes, one per cent of their paid in capital stock, it "cannot turn round and assess a tax on the shareholder." (Official Page 477; Law Page 725.)

The State legislature, by its enactments, had, in this case, deprived the State of the right to differentiate the capital stock from the shares in the hands of the shareholders, and to tax each, so far as that was within the power and jurisdiction of the State.

In *Plumber vs. Coler*, 178 U. S. 115, (44 Law 998), *Mr. Justice Shiras*, quoting from *Mr. Chief Justice Fuller* in *Pollock vs. Farmer's Loan & Trust Co.* 157 U. S. 537, (39 Law 763), said:

"As the States cannot tax the powers, the operations or the prop-
" erty of the United States, nor the means which they employ to
" carry their powers into execution, so it has been held that the
" United States have no power under the Constitution to tax either
" the instrumentalities or the property of a State. As then, for the
" reasons advanced and applied in the previous cases, it is not with-
" in the power of a State to tax Federal securities, *it was not nec-*
" *essary for Congress, in order to secure such immunity to declare*
" *in terms, in the Act of July* 14, 1870, *and on the face of the*
" *Bonds issued thereunder, that the principal and interest were ex-*
" *empt from taxation in any form by or under State, municipal or*
" *local authority.* Such a declaration did not operate to withdraw
" from the States any power or right previously possessed, nor to
" create, as between the States and the holders of the bonds, any
" contractual relation. It doubtless may be regarded as *a legitimate*
" *mode of advising purchasers of such bonds of their immunity*
" *from State taxation and of manifesting that Congress did not*
" *intend to waive this immunity*, as it had done in the case of Nat-
" tional Banks, which are admittedly governmental instrument-
" alities." (Official Page 118 Law page 1002. Left Col.)

The National Banking Act must, therefore, be construed precisely the same as if it contained a clause to the effect, that the Constitutional prohibition upon the powers of the State to tax the powers, operations, property, instrumentalities and securities of the United States, continue in full force and effect, except as otherwise expressly provided in this Act.

The rule that it takes affirmative legislative permission, enacted by Congress, to authorize a State to assess a tax, directly or indirectly, upon the securities issued by the United States, and the further rule that it takes legislative action to authorize an assessment for taxation upon the capital or capital stock, as property of the corporation, and upon the shares of the stock in the hands of the shareholders, as property of the shareholders, so far as the capital is invested in Federal securities, as we view it, impel the conclusion, that both of these legislative authorizations and permissions must come from Congress, if the tax is one directly or indirectly upon the securities of the United States. These are legislative questions, of which Congress has exclusive jurisdiction.

No statute enacted by the State legislature, and no decision made by the highest Court of a State can change these from Federal to State questions. nor authoritatively settle the Federal questions involved. The judicial settlement of these Federal questions can be effected only by this Court. Whether or not State taxation is, directly or indirectly, upon the securities of the United States is a Federal judicial question, which can be finally determined only by the authoritative decision of this court.

Undoubtedly, the State Courts have concurrent but subservient jurisdiction with the Federal Courts, to decide all Federal questions properly arising in the cases there pending, and such decisions are conclusive as to the rights of the parties, and establish precedents binding in that jurisdiction until the question is brought here in some proper method, for determination by this Court. But where the particular Federal point is passed upon and decided by this Court, its decision is paramount and conclusive throughout the United States, and is binding upon all courts therein, State and Federal.

It is also true that this Court will extend due courtesy and give due consideration to the decisions of the learned tribunals composing the several highest Courts of the States, and will carefully weigh the grounds upon which the State Courts acted; but this court will form its own judgment and make its own decision as to all Federal questions properly brought here for review, the decision of the State Courts having no binding force upon this Court, where Federal questions are involved.

The opinion of this Court by *Mr. Justice Shiras*, in *Plumbers vs. Coler*, 178 U. S. 115, (44 Law 998), cited *supra*, thus states the relation of the State Courts to this Court:

"We cannot, however, accede to the suggestion in the brief that "the State decisions are entitled to but little consideration, for "the reason that 'they are the determination of a distinct sover- "eignity, adjudicating upon the rights of the nation, and naturally "jealous of their own.' Undoubtedly, in a case like the present, "*the national law is paramount, and its final exposition is for this* "*Court.* Still, for reasons too obvious to require statement, the "decisions of the State Courts, particularly if they are uniform and "concur in their reasonings. are worthy of respectful considera- "tion, even if the question be, at last, a Federal one." (Official page 120; Law page 1002-right col).

This Court has expressed itself many times as to the paramount nature of the Federal Constitution and the Laws of Congress passed in pursuance thereof. In *Northern Securities Co. vs. United States*, 193 U. S., 333, (48 Law 698), this court, speaking through *Mr. Justice Harlan, said*:

"By its very terms the Act regulates only commerce among "the States and with foreign States. Viewed in that light, the Act, "if within the powers of Congress, must be respected; for by the "explicit words of the Constitution, that instrument and the laws "enacted by Congress in pursuance of its provisions, are the Su- "preme law of the land, 'anything in the Constitution or laws of any "State to the contrary notwithstanding,'—supreme over the States, "over the Courts, and even over the people of the United States, "the source of all power under our governmental system,—in re- "spect of the objects for which the National Government was or- "dained. An Act of Congress constitutionally passed under its "power to regulate commerce among the States and with foreign "nations is binding upon all; as much so as if it were embodied "in terms, in the constitution itself. Every judicial officer, whether "of a National or a State Court, is under the obligation of an oath "so to regard a lawful enactment of Congress. Not even a State, "still less one of its artificial creatures, can stand in the way of its "enforcement. If it were otherwise, the government and its laws "might be prostrated at the feet of local authority. *Cohen vs. "Virginia*, 6 Wheaton 264, 385; 5 Law 257, 286, 293. These "views have been often expressed by this Court. And all, we take "it, will agree, as established firmly by the decisions of this Court, "that the power of Congress over commerce extends to all the in- "strumentalities of such commerce, *and to every device* that may "be employed to interfere with the freedom of commerce among "the States and with foreign nations. Equally, we assume, all "will agree that the Constitution and the legal enactments of "Congress are, by express words of the Constitution, the supreme "law of the land, anything in the Constitution and laws of any "State to the contrary notwithstanding." (Official page 344; Law page 703-left col.).

Whether or not the questions are Federal, and, if Federal and properly presented in the case, what the true rules are, are questions for final exposition by this Court. There can be no doubt that whether a State tax is a *direct or indirect tax on Federal Securities* is a Federal question. There can be no pretense of any permission given by Congress to tax shares of stock in State corporations, directly or indirectly, to the extent that the capital of such corporations is invested in United States securities, as the National Banking Act, by its terms, is limited to shares of stock in National banks, and has no application to State corporations, banks or any other kind,—and there is no other Federal Statute on the subject. But, if any claim of permission, given by Congress, is asserted, to tax shares of stock of a State corporation, where the capital is invested in U. S. Securities, whether or not such permission exists is also a Federal question.

The separation for purpose of taxation, of the property in the capital of the corporation from the property in the shares held by individuals, so far as it affects Federal securities, can be made only by or under the authority of Congress; the State has no jurisdiction over this subject matter, except in so far as it derives such authority from permission given by Congress.

In the different views necessarily and properly taken of the relation of a private corporation, as a legal entity, to its corporators and stockholders, the legal principles, that the corporation has a separate existence as an artificial person, and holds legal title to all property belonging to the corporation, while the shareholders hold legal title to the shares of stock, are not always the controlling ones.

For certain purposes of taxation, the relation, is sometimes deemed that of debtor and creditor. *First National Bank, (Albia), vs. City Council*, 86 Iowa, 28 cited *supra*. On the books of the corporation the amount paid in by each shareholder, and each dividend declared on his shares, are carried to his credit on the books of the company, and he is charged in his account with all sums paid to him in connection with his stock and dividends, the relation being treated as that of creditor and debtor. But with this relation, we are not concerned in this division of our brief.

It is undoubtedly true that the original funds contributed by the corporators and stockholders constitute the capital of the corporation. It is the same identical money and property contributed by them and handed over to the corporation which constitute its capital. The corporation had nothing of its own, and contributed nothing of its own. The corporation has no beneficial interest whatever in the property, to which it holds the legal title, nor in any increase thereof by way of profits, nor in any diminution by way of expenses or losses. For many purposes. the corporation is considered as a mere trustee, the stockholders being the real beneficiaries or *cestui que trustent*, holding the equitable interest, while the legal title is in the corporation, as the shareholders are entitled to all gains, suffer all the losses, and are eventually entitled to receive back their original contributions increased or diminished by the gains or losses, remaining on hand, as the case may be. This view is presented in the case of *Bridgman vs. Keokuk*, 72 Iowa, 42, previously cited. See also *Jones vs. Electric Co.*, 144 Fed., 765.

In *Primghar State Bank vs. Rerick*, 96 Iowa, 243, *Robinson J.*, in delivering the opinion, said:

"In the case of *Hubbard vs. Board*, 23 Iowa, 143, a distinction "based upon *Van Allen vs. Assessors*, 3 Wall. 573, between taxing the capital stock and the shares of the capital stock, of a bank, "was recognized but it cannot with any justice be said that in-

" equality of taxation results from taxing the shares separately to " their owners and taxing them collectively to the State bank. " *The aggregate capital of an incorporated bank is virtually owned* " *by its stockholders,* and each share represents a definite part of " the whole. (Citations). Therefore, the aggregate of the taxes " levied upon the separate shares would be the same as those levied " upon the separate shares taken together, or upon the capital stock. " National Banks are not liable for the taxes on the shares of stock " unless they have dividends or other property of the shareholders " which may be used for the payment of the taxes, while State " banks are liable for the taxes without regard to the dividends or " other property owned by the stockholders. But as the capital of " a State bank is really owned by the stockholders, and as it is re- " duced by the amount paid for taxes, its value is reduced by a sum " equal to that paid, and the shareholders, do. in effect, pay the " taxes and equality of taxation to that extent exists under the " two systems." (Pages 243-244).

In *Farrington vs. Tennessee*, 95 U. S. (5 Otto) 679, (24 Law 560,) this court, speaking through *Mr. Justice Swayne*, said:

"The capital stock and the shares of capital stock are distinct " things. The capital stock is the money paid or authorized or " required to be paid in as the basis of the business of the bank, " and the means of conducting its operations. It represents what- " ever it may be invested in. No power to increase or diminish " it belongs inherently to the corporations. *It is a trust fund held* " *by the corporation as a trustee.* It is subject to taxation like other " property. If the bank failed, equity may lay hold of it, administer " it, pay the debt and give the residuum, if there be any, to the " stockholders. If the corporation be dissolved by judgment of law, " equity may interpose and perform the same functions. (Cita- " tions). The shares of the capital stock are usually represented " by certificates. *Every holder is a cestui que trustent to the extent* " *of his ownership.* The shares are held and may be bought and " sold and taxed like other property. Each share represents an " aliquot part of the capital stock. But the holder cannot touch a " dollar of the principal. He is entitled only to share in the divi- " dends and profits. Upon the dissolution of the institution, each " shareholder is entitled to a proportionate share of the residuum " after satisfying all liabilities. The liens of all creditors are prior " to his. The corporation, though holding and owning the capi- " tal stock, cannot vote upon it. It is the right and duty of the " shareholders to vote." (Official pages 686, 687; Law page 560).

In *Northern Securities Co. vs. United States*, 193 U. S. 335, (38 Law 699), the opinion by *Mr. Justice Harlan* recognized, that for

certain purposes, a State corporation acts as a trustee for its own stock holders. It is there said:

"What the government particularly complains of, indeed, all "that it complains of here, is the existence of a combination among "the stockholders of competing railroad companies, which, in vio- "lation of the Act of Congress, restrains interstate and international "commerce *through the agency of a common corporate trustee* "designated to act for both companies in repressing free com- "petition, between them." (Official page 335; Law page 699,—right column).

Has Congress the authority and right to assert the existence of this power over the equitable or beneficial right, title, interest or ownership of Federal securities, and to insist that a taxation, by the State, of the equitable interest owned by the shareholders, or by the beneficiaries of a technical trust, in United States securities, the legal title to which is held by a State corporation or by a technical trustee,—it or he, having, in each case, the only real beneficial interest therein,—is a direct or indirect taxation of the Federal securities, which cannot lawfully be done by the State, without express permission so to do having been first given by Congress? We answer this in the affirmative. Congress has this power. Indeed,—we contend that the Federal Constitution has this effect, without any action on the part of Congress, unless Congress has enacted its affirmative permission authorizing such taxation by the State. In either view the State cannot interfere with the exercise, by Congress, of this paramount authority.

In *Northern Securities Company vs. United States*, 193 U. S. 347, (48 Law 704), the opinion, by *Mr. Justice Harlan*, said:

"In the case just referred to, (*Baltimore & O. R. Co. vs. Mary-* "*land*, 21 Wall 456, 473; 22 Law 678, 684), the Court does not "say, and it is not to be supposed that it will ever say, that any "power exists in a State to prevent the enforcement of a lawful "enactment of Congress, or to invest any of its corporations, in "whatever business engaged, with authority to disregard such en- "actment or defeat its legitimate operation. On the contrary, the "Court has steadily held to the doctrine, vital to the United States "as well as to the States, that a State enactment, even if passed in "the exercise of its acknowledged powers, must yield, in case of "conflict, to the supremacy of the Constitution of the United States "and the Acts of Congress enacted in pursuance of its provisions." (Official page 347, Law page 704).

The right or privilege to own the legal or equitable title or beneficial interest in Federal securities, exempt from State Taxation, is derived from the Federal Constitution and statutes, not from any

State Constitution or statute. Conceding, for the sake of argument, that a State may withhold from its corporations the right to invest any of their capital in Federal securities, a right we much doubt as to moneyed or financial corporations,—the State cannot permit its corporations to invest their capital in Federal securities, and at the same time limit or affect in any manner, directly or indirectly, the immunity from State taxation, with which the Federal Constitution invests such securities, in the absence of permissive legislation by Congress.

The State cannot say that it will permit investments by its corporations in Federal securities, provided that it, the State, reserves the right to tax, to such extent as it pleases, the money about to be invested in Federal securities, or to tax the securities themselves, or to tax the beneficial ownership of such securities, if the legal title thereto is not taken in the name of the purchaser or beneficiary, or to tax the income derived from such securities. If such right to invest at all in Federal securities is given, the right or privilege of immunity or exemption of such securities from State taxation, arising from the U. S. Constitution, is not subject, in the slightest degree, directly or indirectly, to State control, because the right or privilege, giving the exemption from State taxation, comes from the Federal Constitution and statutes, unless Congress says otherwise.

The practical effect can be readily seen. If, for illustration, the tax on the U. S. Bonds, or on the money invested therein or on the beneficial interest in the bonds, or on the income derived therefrom, would be $3,000.00, the same obstruction, arising from the State taxation, would, in each case, be placed upon the purpose and intent of the Federal Constitution and the will of Congress, that these securities should bear no State tax. Such taxation, whether on the bonds, or the beneficial interest therein, or the income therefrom, or the money invested therein, would equally deter investments in Federal securities.

In *Home Insurance Co. vs. Morse,* 87 U. S., (20 Wall. 445). (22 Law 365), the State of Wisconsin enacted a law which required Insurance Companies, as a condition precedent to their right to transact business in that State, to "first appoint an attorney in this State on whom process of law can be served, containing an agreement that such company will not remove the suit for trial into the United States Circuit Court or Federal Court," the appointment and agreement to be executed as provided in the Statute. This statute was, by this court, held invalid, being in violation of the Federal Constitution.

The opinion, by *Mr. Justice Hunt,* clearly recognized the right of a State to prohibit a corporation from entering into the State

to transact the business of the corporation, or the right of the State to impose such conditions on the corporation, as the State saw fit, but said: "The State of Wisconsin can regulate its own corporations and the affairs of its own citizens, *in subordination however, to the Constitution of the United States.*" (Opinion Page 455; Law Page 369). After stating that the right, duly exercised, of a citizen of another State to remove a case to the Federal Court, was an absolute right secured by the Federal Constitution, the opinion further said:

"The statute of Wisconsin is an obstruction to this right; is "repugnant to the Constitution of the United States and the laws "in pursuance thereof, and is illegal and void." (Opinion Page 458; Law Page 370).

The agreement, entered into, in pursuance of the requirements of this State statute, was also held invalid.

In the *'Home Insurance Company'* case, just cited, the power of the State to admit generally, to admit on terms, or to exclude, foreign corporations from entering the State, was a matter solely within the discretion of the State legislature, so long as it acted within its province and jurisdiction; but this power must be so exercised as not to conflict with the Federal Constitution.

So also, the power of the State legislature to differentiate between the ownership of the capital stock and the shares of stock, for purposes of taxation, is equally a matter solely within the discretion of the State legislature, so long as it acts within its province and jurisdiction; but, in this matter also, the power must be so exercised, as not to conflict with the Federal Constitution.

Now as to the wisdom or policy of Congress granting or refusing permission, for the State to tax the beneficial ownership of Federal securities, through the shares of stock, or to allow or forbid, for purposes of State taxation, a separation of the property in the capital stock from the property in the shares of stock in the hands of shareholders, to the extent of the investment of such capital in Federal securities, we present the following propositions.

First: This is purely a Federal legislative question, and its determination is entrusted exclusively to Congress. Whatever determination of the question Congress may make, is binding and conclusive upon the Courts. What effect the Federal Constitution has upon State taxation of U. S. Securities, and what the intention of Congress is, as determined from its statutes, read in the light of the Constitution, are Federal judicial questions; but when the legislative intention is once ascertained, such intention is binding and conclusive upon, and is not open to review by, the Courts.

Second: It is within the power and discretion of Congress to offer one set of privileges or inducements to capitalists to invest their funds in Federal corporations, acting as governmental instrumentalities, whose capital may or shall, in large part or in whole, be invested in Federal securities, while it may offer another set of inducements, by way of exemption from State taxation, to secure the investment in Federal securities of the capital of private corporations organized under State laws. This power must certainly exist; its manner of exercise is a Federal legislative question. The extent to which it has been exercised, is a Federal judicial question, to be determined from the Federal Constitution and U. S. statutes.

In plain English, Congress may give to a Federal Bank the powers and privileges which were in fact given by the National Banking Act, with the burdens therein provided, to secure contributions of capital to such Bank, a large part of which capital must be, and all of which may be, invested in Federal Securities, (these privileges and burdens are carefully enumerated in the *'Van Allen'* case, 70 U. S. 3 Wall 573). But, at the same time, it may give to State corporations, and to the stockholders of such State corporations, immunity from State taxation on the Federal securities in which the corporate capital is invested, such immunity extending to the Federal securities purchased, to the capital so invested, and to the beneficial ownership of such capital and securities, through the shares of stock owned by the individuals who furnished the capital, so far as the capital is invested in Federal securities, and to the income derived from such securities. Whether or not Congress has adopted such a policy is a Federal legislative question, to be ascertained by the Courts.

It must be remembered that the power of the nation to borrow money is necessarily exercised, not only in times of peace and prosperity, when interest is low and money easy to obtain, but also in times of National distress, war and disaster, when rates of interest are high, and money is difficult or almost impossible to obtain.

The National Banking Acts passed in 1863 and 1864, take us back to a time, when, notoriously and literally, the life of the Nation was at stake, and capital proverbially timid was exceedingly loth to invest in United States securities. Congress might well have determined to give certain special privileges with special burdens to National Banks, as was then done, to secure extensive investments in National Securities, and, at the same time, to give to State corporations an exemption of Federal securities from State taxation, both as to the corporations and the shareholders, in order to secure liberal investments of their capital in Federal securities. This,

we claim, was then done, by Congress failing to pass any Act authorizing State taxation of the capital, or of the shares of stock, of State corporations, so far as their capital was invested in Government securities.

It must not be overlooked that from the time of the 'Trent' affair, in the latter part of 1861, when the Confederate Commissioners, Mason & Slidell, were taken from an English ship by a United States war vessel, and until after the surrender of Vicksburg and the victory at Gettysburg, and possibly to a somewhat later date, the Statesmen of this country were compelled to keep constantly in mind the possibility of armed interventions by England and France, together or separately. It is unnecessary to suggest the financial stress which would have followed such action, and the necessity for Congress retaining intact its power of keeping exempt from State taxation, direct or indirect, every form of investment in Federal securities, legal or equitable.

The 'Weston' case shows that the United States Securities involved in that case were bearing 6 or 7 per cent annual interest. The early bonds issued in the war of the Rebellion bore 6 per cent annual interest. Even in the war with a comparatively insignificant power like Spain, in the Act of June 13th, 1898, (2 Supp. U. S. Rev. S., Page 800, Section 33), the bonds issued bore 3 per cent annual intefest, to induce a rapid investment of the money immediately necessary for adequate offensive and defensive purposes.

The financial straits of the war of the Revolution are really no longer pertinent, because there was then no Union under the Constitution. The circumstances creating such financial straits as existed in 1812-15 and 1861-65, will, in all human probability, never recur. But, nevertheless, the United States cannot afford to relax its right to prohibit, or rather its right to refuse to permit, State taxation in any form, direct or indirect, whether of the legal or equitable title to or interest in Federal securities.

With this country holding islands, extending nearly half way across the Atlantic Ocean, and holding other islands extending practically across the Pacific Ocean, and with the initial steps already taken to build and police the Panama canal, the opportunities or possibilities of serious difficulties with the powers of the world are largely increased.

The very greatness of this country makes it practically certain that no one country, single handed, will venture to engage in war with the United States, but for this reason combinations of powers are more probable and easily possible, such as England and Germany, or these added to Japan. Such alliances would compel the

United States to use every financial resource, without hindrance or obstruction from any State. Nor must Mexico be overlooked in such possible combinations. It is within the purview of Statemanship that a combination might arise which would surround us with war on every frontier, by sea and land. Such alliances are, at this time, improbable; but sufficiently within the bonds of possibility to be kept in mind by the Statesmen, National Legislators and Jurists of the United States. Certain phases of this question were carefully considered by this Court in the opinion written by *Mr. Justice Shiras,* handed down in *Plumber vs. Coler,* 178 U. S. 135-137, (44 Law 1008-1009).

It is our contention that a State tax on Federal securities, direct or indirect, whether the title or interest be legal or equitable, is prohibited by the Constitution, and this prohibition can only be waived or suspended by Act of Congress. The permission which Congress may give to a State to tax Federal securities, its nature and extent, are purely Federal legislative questions, and the determination thereof by Congress is conclusive, and not subject to review.

We deem it proper to add that the *'Plumber'* case decided that a State tax on an inheritance of Federal securities, was a tax on the privilege of the deceased to transmit his property to his heirs, devisees and legatees, whether as a testate or intestate, and on the privilege of the heirs and legatees to inherit the same, and such tax was not a tax at all on the Federal securities owned and transmitted by the deceased. As such tax was deducted or had to be paid before the inheritance took effect and before the title was transmitted, *the tax was not a tax on the property,* in the ordinary sense, so as to be a tax on the property of the United States, where the government was the devisee or legatee. *U. S. vs. Perkins,* 163 U. S. 625, 41 Law 287. (Official Page of Plumber case, 129; Law page 1006). So that, in the Plumber case, there was no tax on Federal securities.

If Congress has, as we contend, the power to exempt, or to maintain as exempt, from State taxation, the real equitable or beneficial interest in Federal securities, whether the legal title be in a technical trustee or in a state corporation, whose holding is in the nature of a trustee, the prohibition upon the State to impose such tax, already exists under the Constitution, and affirmative permission of Congress is necessary to authorize the State to impose such tax.

One other element is suggested in the opening phrase of the opinion of this Court, speaking through *Mr. Justice McKenna,* in the case of *Cleveland Trust Company vs. Lander, Treasurer,* 184 U. S. 111, 113, (46 Law 458), which says:

"The argument of the plaintiff in error claims a greater im-
"munity from taxation for the shares of the trust company than
"Section 5219 of the Revised Statutes gives to shares in National
"Banks".

If our contention is correct, to the effect, that permission must be given by Congress, for a State to tax Federal securities, directly or indirectly, whether the title thereto be legal or equitable, then the question resolves itself into a purely legislative one, within the exclusive jurisdiction of Congress. When this Court has established the legal effect of the Congressional statutes in the light of the Constitution, it must be conclusively presumed that such legal result was what Congress intended to bring about, and its intention, when so ascertained, as to a matter within its province, is final and conclusive.

It must not be overlooked, that Congress, in the National Banking Act, had no intention of tying its own hands, or establishing any limitation upon itself. It was establishing a limited relaxation of the prohibition upon the taxing powers of the State over a Federal instrumentality, and over Federal securities, leaving the exemption from State taxation in full force, except, in so far as permission for the State to tax was affirmatively given by Congress. The prohibition upon State taxation continued in full force and unimpaired, except in so far as it was relaxed by the affirmative action of Congress. The prohibition is thus maintained, except as to shares of stock of National Banks, and as to these there is a limitation that the taxation upon such shares of stock which the State may impose, "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." (Rev. S. U. S. 5219).

The taxation here prohibited is a greater rate imposed by State legislation, not any difference in the rate of State taxation which may arise under the U. S. Constitution or the laws of Congress because of the qualified permission given by Congress for the State to tax shares of stock in a National Bank, and of its refusal to permit the State to tax shares of stock in a State corporation, where the capital of each corporation, Federal or State, is, in whole or in part, invested in Federal securities, to the extent of such investment.

There is not one syllable, in any U. S. Statute which relaxes or relinquishes, to any extent, the immunity from taxation of shares of stock in a State corporation, whose capital is wholly or partly invested in Federal securities, to the extent of such investment.

We assume it to be settled law, that the difference in the rate of State taxation prohibited by the National Banking Act may arise from extensive exemptions of other moneyed capital from State

taxation, under State Statutes. *Boyer vs. Boyer*, 116 U. S. 689 (28 Law 1089). ***But this rule has no application to an exemption of certain shares of stock from State taxation, arising from the prohibition against State taxation contained in the Federal Constitution and Federal statutes,*** while the subjection to State taxation of other shares of stock arises from the permission to tax, given to the State by the Federal statutes. If the inequality of the tax arises from Federal law, Constitutional or statutory, it is not affected or prohibited by R. S. U. S. Section 5219.

If the rate of State taxation upon so much of the shares of a National Bank as are placed by Congress within its taxing power, is not greater than the rate of taxation upon so much of the shares of a State corporation which Congress has placed or left within the State taxing power, the balance being withheld, from taxation by Congress refusing to grant permission to tax the same, there is certainly no violation of this Section 5219, although the National Bank may have greater valuation subject to taxation than the State Bank would have as result of such Congressional legislation.

In other words, if the whole, or any part, of the shares of stock of a State corporation *is withdrawn from taxation by the Federal*

(Insert of Brief at Page 44, preceding Division 5).

With reference to the phrases in Rev. S. U. S. Section 5219, "that the taxation shall not be at a greater rate than is assessed "upon other moneyed capital in the hands of individual citizens "of such State," in *Mercantile National Bank vs. New York City*, 121 U. S. 138, (30 Law 895), the opinion, by *Mr. Justice Mathews*, said: "that upon a true construction of this clause of the "Act, the meaning and intent of the law makers were that the rate "of taxation of the shares should be the same, or not greater than, "upon the moneyed capital of the individual citizen, which is sub-"ject or liable to taxation." (Opinion, Page 149, Law Page 899, right column). This must certainly be limited to that taxation which the State may impose, *ex proprio vigore*, without permission of Congress, or to that taxation which the State may impose under and by virtue of such permission, if any, as Congress may have given.

The opinion also said that the words of the law "do not embrace "any moneyed capital in the sense just defined, (in competition "with National Banks), *except that in the hands of individual cit-"izens.* This excludes moneyed capital in the hands of corpora-"tions, although the business of some corporations may be such as "to make the shares therein, belonging to the individuals moneyed "capital in their hands as in the case of banks". (Opinion, Page

taxation, under State Statues. *Boyer vs. Boyer*, 116 U. S. (28 Law 1089). *But this rule has no application to an exemp of certain shares of stock from State taxation, arising from prohibition against State taxation contained in the Federal C stitution and Federal statutes,* while the subjection to State taxat of other shares of stock arises from the permission to tax, gr to the State by the Federal statutes. If the inequality of the t arises from Federal law, Constitutional or statutory, it is not fected or prohibited by R. S. U. S. Section 5219.

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In other words, if the whole, or any part, of the shares of sto of a State corporation *is withdrawn from taxation by the Fede Constitution or Federal statutes,* this is not a violation of R. S. U S. Sec. 5219; but if the whole, or such material part of the sha of stock of State corporations, as would bring the ca within the rule of *Boyer vs. Boyer, supra, is withdrawn from tax tion by State Laws,* then there is a violation of said Section 521

Division 5

The statutes of Iowa, under consideration, are in contraventi of the provisions of the XIVth amendment to the constitution of t United States, concerning due process of law, and equal protecti of the laws.

The contentions of plaintiff in error, on this branch of the ca are as follows:

Third: The assessment, by the State of Iowa, or by its mu cipal subdivision, of a tax against a private corporation, cluding plaintiff in error, based upon the value of the shares of sto in the hands of the individual shareholders, and making the co poration *primarily liable* for the payment of such tax, and co pelling the corporation to pay such tax *from its own funds,* with giving to the corporation a right of full recoupment of the tax paid, from the funds of the shareholder which may be in custody, or which may subsequently be received by the corp ation, where no other property of the shareholder is, at any ti

in the possession or custody or under the control of the corporation, and without giving to the corporation the right to retain sufficient of said funds of the shareholder to make full recoupment therefrom to said corporation, is a taking of the property of the corporation *to pay the debt or obligation of another*, and constitutes a taking of the property of the corporation without compensation, and without due process of law, in contravention of the XIVth Amendment to the U. S. Constitution,

Fourth: The assessment, by the State of Iowa, or its municipal subdivisions, of a tax against a private corporation, including plaintiff in error, based upon the value of shares of stock in the hands of the individual shareholder, and making the corporation *primarily liable* for the payment of such tax, and compelling the corporation to pay such tax *from its own funds*, merely giving to the corporation, at its own expense, the right to sue each of the numerous shareholders in separate, personal actions, to recover the tax so paid or, at its own expense, to enforce a lien created upon the shares of stock taxed belonging to each individual shareholder, by a sale of the said share of each for the amounts of the tax so paid, with the alternative of losing the amounts paid by said corporation to discharge the tax on the shares, is a taking of the property of the corporation *without compensation*, and without due process of law, in contravention of the XIVth Amendment to the U. S. Constitution.

Fifth: The failure or refusal of the laws of the State of Iowa to grant to State Banks, *Savings Banks*, (of which plaintiff in error is one), and Loan & Trust Companies, organized under the laws of that State, the right to retain and recoup the corporation, from funds or property of each individual shareholder, to the extent of taxes assessed upon the shares of stock held by each shareholder, which have been paid by the corporation, while granting such right of retention and recoupment *as to National Banks, and as to all corporations organized under the laws of said State, other than the corporations first above named, is a denial to Savings Banks*, and to plaintiff in error, of the equal protection of the laws, in contravention of the XIVth Amendment to the U. S. Constitution.

Sixth: Compelling a part of the corporations, organized under the laws of the State of Iowa, to become *primarily liable*, as agents, to the State, or its taxing subdivisions, for the payment of the taxes assessed upon the shares of stock of said corporation owned by the individual shareholder, the real principals, *while making other agents*, to whom the property of their principals is assessed, liable for the payment of the tax assessed, *only to the extent of the money*, funds or property of each principal in the possession of

such agent, said tax to be paid out of said money or funds or the proceeds of said property, of the principals, is a denial to the corporations, first above described, of the equal protection of the laws in contravention of the XIVth Amendment to the U. S. Constitution.

It is necessary to refer to parts, or all of Sections 1320, 1322, 1323, and 1325 of the Code of Iowa of 1897. We, therefore, repeat here or set out the Sections or parts of Sections referred to, as follows:—

"*Section* 1320. Any person *acting as the agent* of another, *and* "*having in his possession or under his control or management* any "money, notes and credits, or personal property belonging to such "other person, with a view to investing or loaning or in any other "manner using or holding the same for pecuniary profit for him- "self or the owner, shall be required to list the same at the real "value, and such agent shall be personally liable for the tax on the "same; and if he refuses to render the list or to swear to the same, "the amount of such money, property, notes or credits may be "listed and valued according to the best knowledge and judgment "of the assessor.

"*Section* 1322: Shares of stock of *National Banks* shall be "assessed *to the individual stockholders* at the place where the bank "is located. Shares of stock of State and *Savings banks* and "Loan and Trust companies shall be assessed *to such Banks* and "Loan and Trust Companies, *and not to the individual share-* *holders.* * *

"*Section* 1323: The shares of stock of any corporation or- "ganized under the laws of this state, except those which are not "organized for pecuniary profit, *and except corporations otherwise* "*provided for in this act, shall be assessed to the owners thereof,* "at the place where its principal business is transacted, the assess- "ment to be on the value of such shares on the first day of January "in each year. * *

"*Section* 1325. The corporations described in the preceding "sections *shall be liable for the payment of the taxes assessed to* "*the stockholders of such corporations* and such tax shall be pay- "able by the corporation in the same manner and under the same "penalties as in case of taxes due from an individual tax-payer, "and may be collected in the same manner as their taxes, or by "action in the name of the county.

"*Such corporations may recover* from each stockholder his pro- "portion of the taxes so paid, *and shall have a lien on his stock* "*and unpaid dividends thereof.* If the unpaid dividends are not "sufficient to pay such tax, the corporation may enforce such lien

"on the stock by public sale of the same, to be made by the sheriff "at the principal office of such corporation in this State, after "giving the stockholders thirty days notice of the amount of such "tax and the time and place of sale, such notices to be by regis- "tered letter addressed to the stockholder at his post-office ad- "dress, as the same appears upon the books of the company, or is "known by its Secretary."

We will first state certain propositions of law, in relation to the matters under consideration, which have been settled by prior decisions of this Court. They are as follows:—

(a) A State may, for purposes of taxation, fix, within the territorial limits of said State, the *situs* of shares of stock owned by the individual shareholder, in a private corporation, organized under the laws of the taxing State, whether such shareholder resides within or without said State, where the right so to do is reserved in the charter, or in the general laws of said State in force at the time the corporation was created, or where the right to alter, amend or repeal the charter is reserved in the Constitution of the State organizing the corporation. *Corry vs. Baltimore*; 196 U. S. 477, 478, (49 Law 562).

While no such right is reserved in the Articles of Incorporation of plaintiff in error, or in the Chapter of the Code of Iowa, under which plaintiff in error was organized, such right is, doubtless, sufficiently reserved in Article 8—Section 12, of the Constitution of Iowa, and in the Code of Iowa of 1897, Section 1619, which is a substantial re-enactment of Code of Iowa of 1873, Section 1090.

At any rate, in this case, we do not question the right of the State of Iowa, for purposes of taxation, to fix, within the territorial limits of that State, the taxing *situs* of the shares of stock owned by the individual shareholder, whether resident within or witout that State.

(b) A State, without jurisdiction, cannot assess a tax so as to prevent its act being a taking of property without due process of law. A state cannot assess to any person, natural or artificial, a tax based solely upon the ownership of property, *where the person assessed does not own the same*, and has no right, title or interest therein. Such attempted exercise of the taxing powers is a taking of property without due process of law, in contravention of the 14th Amendment to the U. S. Constitution.

Delaware Ry. Co. vs. Pennsylvania, 198 U. S. 341, 358, (49 Law 1084);

U. S. vs. Baltimore & Ohio R. R. Co., 84 U. S. (17 Wall) 322, (21 Law 597);

Bonds

Foreign Held Banks, (*Cleveland Ry. Co. vs. Pennsylvania*) 82 U. S. (15 Wall) 300, (21 Law 179);

The assessment for taxation, in this case, *cannot be sustained on the ground of ownership*, by plaintiff in error, of the shares of stock assessed, because the same were the property of the individual shareholders, and plaintiff in error had no ownership, right, title or interest therein or thereto.

(c) Property in the possession or custody, or under the control of a resident agent, at the date, on, or as of, which the assessment is made, may be assessed to such agent, as if he were the owner thereof, *the tax being payable out of the property taxed.*

New Orleans vs. Stempel, 175 U. S. 309, (46 Law 949); *Walker vs. Jack*, 88 Fed. (6th C. Ct.) 576; Code of Iowa of 1897, Section 1320. *Hershire v. First National Bank*, 35 Iowa 272.

The assessment for taxation, in this case, *cannot be sustained upon the ground of an agent in possession* of the property assessed, as there is no pretense or claim that plaintiff in error, at any time, was in the possession or custody of the shares of stock assessed, or of the certificates thereof, owned by the individual shareholders, or that the same were at any time, after the shareholders became the owners thereof, under the control of the corporation. An assessment of said shares of stock to plaintiff in error, based solely upon this ground, would be a taking of the property of plaintiff in error, without due process of law.

(d) A private corporation may be required by a State statute, in the nature of a garnishment proceeding, to hold and pay over to the State, or to a municipal subdivision thereof, the funds or property of the individual shareholder, in the possession of the corporation when the tax becomes due and payable, or which may come into its possession after the tax becomes due and payable, in discharge of a tax assessed upon or against shares of stock of said corporation, in the hands of the individual shareholder, when the amount so required to be paid as a tax, does not exceed the sum or value of the funds or property of the shareholder held by the corporation. But the statute must give to the corporation the authority or right to withhold and pay over said funds or property. The authorities cited *infra*, in subdivision "E", sustain the foregoing proposition.

Perhaps the State may have the power to require the corporation to hold funds or property of the shareholder in its possesion or custody on the date of the assessment, or which come into its possession between the assessment and the date when the tax becomes due and payable, but the statutory authority for so doing must be clear and explicit.

The liability of the corporation, in effect, as a garnishee, to pay a tax assessed upon or against the shares of stock in the hands of the individual stockholder, is limited to the extent of the funds, or property of the shareholder *in the possession* or custody or under the control of the corporation.

If the Statute goes beyond this, and requires the corporation to pay such tax upon the shareholder's shares, in whole or in part, *out of its own funds*, then the tax, to that extent, would be one primarily upon the corporation itself, and not upon the shareholder.

In that case, such excess would be a taking of the property of the corporation without due process of law. In the same case, in event of the capital stock of the corporation being invested, in whole or in part, in U. S. Securities, the assessment would, in effect, be a tax upon such securities, so far as the tax was assessed upon the capital invested in said Federal Securities.

There is no basis or ground, in the record, for any claim that plaintiff in error ever had in its possession or custody, or under its control, any property of any individual shareholder, as distinguished from the money or funds of said shareholder, from the proceeds of which property the tax levied on the assessment in question could have been paid by the Bank. We, therefore, shall not make any further reference to the property of the shareholder, other than funds or money.

(e) The State may require a private corporation to act *as agent for the State* in collecting, or as *agent for the shareholder* in paying, or as *agent for both* in collecting and paying, from the funds, and perhaps from the property of the shareholder, the amount of a tax assessed upon or against the shares of stock owned by said shareholder, and to pay said tax from the funds of said shareholder, and perhaps from the proceeds of his property, which may be in, or come into, the possession or custody, or under the control of the corporation, at or after the time the tax becomes due and payable to the State, or to a municipal subdivision thereof. Perhaps the State may exercise this power as to money or property held by the corporation on or after the date of the assessment, but before the tax comes due and payable, if the authority so to do is clear and explicit. But the statute must give to the corporation the authority or right to withhold, convert when necessary, and pay over said funds or property.

Corry vs. Baltimore; 196 U. S. 475, 476, (49 Law 561).
First National vs. Kentucky; 76 U. S. (9 Wall) 353, 360; (19 Law 701).
Lionberger vs. Rowse; 76 U. S. (9 Wall) 468, 477; 19 Law 725.)

United States vs. Baltimore Ry Co. 84 U. S. (17 Wall) 322; (21 Law 597).
Bell's Gap Ry. Co. vs. Pennsylvania; 134 U. S. 232, (33 Law 892, 896).
Merchant's National Bank vs. Pennsylvania; 167 U. S. 461, 465 (42 Law 238).
Hershire vs. First National Bank; 35 Iowa 272.

As already stated, there is no basis or ground, in the record, for any claim that plaintiff in error ever had in its possession or custody, or under its control, any property of any individual shareholder, as distinguished from the money or funds of said shareholder, from the proceeds of which property, the tax levied on the assessment in question could have been paid by the bank. We, therefore, shall not make any further reference to the property of the shareholder, other than funds or money.

Besides the settled propositions of law above stated, some other points may be conceded, as follows:—

(f) It may be conceded that the State has power to establish for its own benefit, and to enforce a lien upon the shares of stock, owned by the individual shareholder, to secure the payment of a tax levied by the State, or a municipal subdivision thereof, upon such shares, and may establish, by proper proceedings, a method for selling such shares, so far as necessary, to pay such taxes; but we distinctly deny the right or power of the State to *compel the corporation to pay said tax from its own funds*, and then to expend large sums of money, frequently much larger than the tax assessed, by way of counsel fees and other necessary expenses of litigation, in an attempt by the corporation to recoup itself for the money advanced as taxes to the State, with the alternative of losing the tax so paid, if unwilling to embark upon or engage in such litigation;

Such compulsory expenditure of the corporate funds, for the sole and exclusive benefit of the State, constitutes a taking of the property of the corporation, by the State, without compensation and without due process of law.

(g) It may be further conceded, that the State may give to a corporation a right to recoup itself, by action, for any sums voluntarily paid by the corporation, as agent for the State, upon taxes levied by or under the authority of the State, upon or against the shares of stock in said corporation held by the individual shareholder, and that the shareholder may be held liable in an action brought by the corporation, under statutory authority, to recover from the shareholder the taxes duly assessed, and so paid

by the corporation. *Corry vs. Baltimore;* 196 U. S. 475, 476, (49 Law 561).

But we deny the right or power of the State to compel the corporation to pay said tax, *from its own funds,* and then to expend large sums of money, frequently much larger than the tax assessed, by way of counsel fees and other necessary expenses of litigation, in an attempt by the corporation to recoup itself for the funds advanced to the State as taxes, with the alternative of losing the tax so paid, if unwilling to embark upon or engage in such litigation. Such compulsory expenditure of the corporate funds was for the sole and exclusive benefit of the State, and constitutes a taking of the property of the corporation, by the State, without compensation and without due process of law.

Due Process of law: In a prior subdivision of this brief, (Division 3), we have referred to Code Sections, 1322, 1323 and 1325, quoted near the commencement of this division of our brief, stating our contention that the shares of stock in State Banks, Savings Banks and in Loan & Trust Companies, *are to be assessed to the corporations,* and not to the individual shareholders.

But no right of recoupment or of recovery *by a Savings Bank,* from the shareholder, is given to the Savings Bank for the taxes assessed on the shares belonging to such shareholder, which have been paid by the Savings Bank. No right is given to the Savings Bank to sue for and recover the taxes so paid by the Bank; nor is any lien created by such statute, in favor of the Savings Bank, on the shares of stock or other property belonging to the shareholder, for the amount of the taxes on such shares paid by the Bank.

The right to withhold dividends, the right to a lien on the shares of stock and the enforcement of such lien, and the right to sue the shareholder for the taxes paid, is limited, by the Statute, *to taxes paid by the corporation upon the shares of stock which, under the Statutes, are assessed to the individual shareholders,* but not to the taxes on shares of stock assessed to the corporation, and not assessed to individual shareholders. These rights, of recoupment, recovery and lien, have no application to the assessments for taxation of shares of stock to the corporation itself, and not to the individual shareholder.

This is, in effect, an assessment upon the Bank itself, not upon the shareholder or upon his shares of stock, and is a taking of the property of the bank without due process of law.

It is clear from the record, that no property of the shareholder, other than dividends, was ever in the bank's possession or custody, or under its control, after the certificates for the shares of the stock were delivered to the several shareholders.

The tax in question was assessed in April 1902; it was placed on the tax list by the county Auditor during the year 1902, and this tax list was delivered by said Auditor to the County Treasurer on the first day of January, 1903, at which time the taxes assessed for 1902, became due and payable. There was an interval of about nine months between the date of the actual assessment and the date when the tax became due and payable, but as the assessment was made upon the value of the shares as owned on January 1st, 1902, there was in reality, a full year between the date as of which the assessment was made, and the date of the maturity of the tax.

Assuming, that a Statute would be valid and constitutional which authorized the Savings Bank to withhold from the shareholder, to apply upon the tax to be assessed upon his shares, when it became due, any money or funds belonging to the shareholder in the possession of the Bank at the date of the assessment, or which might come into its possession after the assessment and before the maturity of the tax, *there is no such statute.* In the absence of such statute, a Savings Bank could not legally withhold any such funds to which the shareholder was entitled.

As to funds belonging to a shareholder which might come into its possession at or after the maturity of the tax, there is again no right or authority given by Statute to the Savings Bank to withhold or apply such funds in payment of the tax.

But the assessment was made in April 1902, the action of the local board of Review, in reviewing and affirming the assessment complained of, was required by law to be completed prior to May first, 1902, (Code of Iowa of 1897, Section 1370), and was in fact, completed prior to the adjournment of that Board, *sine die,* on April 29th, 1902. (Trans. 17-Lines 3-5).

The affirmance of the assessment relates back to the date of the assessment. The action of the District and Supreme Courts of the State was founded upon the situation and facts existing on January 1st, 1902, as established by the evidence, and their respective affirmances of the assessment made, related back to the date of the assessment.

Under the sections of the Code of Iowa, previously cited, (Division 3) concerning the rights and duties of the person assessed and the powers and duties of the local Board of Review, the person aggrieved must make his complaint before that Board or be barred of relief.

At the time when the assessment was made, and also at the time when the local Board of Review acted upon the complaint made by plaintiff in error, concerning the Assessment in question,

there was no money or property belonging to the shareholders which it could legally withhold to meet the tax, and there was no certainty that plaintiff in error ever would have any money or property in its possession belonging to the shareholder, available for this purpose, after the tax became due. That was contingent upon future events and transactions which were unknown and unknowable. There was no right or authority, under the Statute, for a Savings Bank to withhold the funds if any, belonging to the shareholders received after the tax matured, and to apply them on the tax.

The tax, in form and in legal effect, is upon the Savings Bank, placing upon the Bank the *absolute liability* for payment of the tax, whether or not it ever receives any recoupment, in whole, or in part, of the tax so paid for the benefit of the shareholder; nor is there any provision in favor of the Savings Bank, limiting its obligation to the paying over of such funds only, the property of the shareholder, as it may receive.

The tax is not assessed upon property belonging to the Savings Bank, although the liability of the bank to pay the same *is unconditional and absolute*. The tax is claimed to be assessed upon the shares of stock belonging to the shareholder, but the tax is assessed *against the Savings Bank, and creates an absolute liability on the part of said Bank* for its payment, without regard to whether or not it ever will have in its possession any means of the shareholder, and without giving any right of recoupment to the Savings Bank.

It is our contention that an agent made liable for the payment of a tax, on the property of his principal, cannot, under the Federal Constitution, be made liable in excess of the funds or property of the principal in his possession, or which may come into his possession, nor unless he is given statutory authority to withhold from his principal sufficient of the principals' funds or property, with which to pay the tax assessed, and to apply the same in payment of the tax; and that any statute which does not thus protect the agent, but makes him absolutely liable in excess of any money or property of the principal he may have or receive, is, in whole or in part, taking of the property of the agent without due process of law.

The Iowa Statutes under consideration are, in these respects, in contravention of the 14th Amendment to the Constitution of the U. S. concerning due process of law.

We have already, called attention to the decisions of the Supreme Court of Iowa, on the subject of the deduction of the just debts of a shareholder of a private corporation from his shares of

stock, considered as credits, when listing them for taxation, and we have shown that the case of *First National Bank of Albia vs. City Council,* 86 Iowa, 28, and the other Iowa cases cited, harmonize with the holdings, on this subject, of the Federal Courts.

If it be held that a shareholder may deduct his just debts from his shares of stock, as credits, when listing them for taxation, then the Iowa Statutes under consideration require the Savings Bank absolutely to pay taxes *upon the full amount of the shares,* without any possibility of such deduction being made, and leave the Savings Banks without any possibility of recoupment for taxes so paid, as the shareholder could not be compelled to refund to the Bank *any more than could have been properly assessed against him,* if he had listed his own property for taxation.

It is settled law that no notice of the assessment upon shares of stock need be given to the shareholder, nor is it necessary that the shareholder be given an opportunity to contest the correctness of the assessment and valuation, because the corporation may, by Statute, be constituted the agent of the stockholder for these purposes. *Corry vs. Baltimore;* 196 U. S. 478, (49 Law 562).

Assuming, that the legal effect of the statutes of Iowa is to constitute the corporation as the agent of the shareholder to protect his interests in relation to the assessment of the shares for taxation, the record shows that one of the grounds of the motion for decree made by plaintiff in error, before the State District Court, was as follows:

"If the tax shall be regarded as levied upon the property of "the shareholders and paid by them, then and in that case, the "shareholder is deprived of the right to offset his indebtedness, "granted him under the general laws of the State. (Trans. 18-"lines 3-6)."

As to the Savings Bank itself, the claim was made that the assessment was without due process of law. The corporation as agent cannot be required to pay any sum in excess of what it could recoup from its principal, the shareholder, except by a law which deprives it of its property without due process of law.

In *First National Bank vs Kentucky,* 76 U. S. (9 Wall 353, (19 Law 701), the opinion, by *Mr. Justice Miller,* said, that the State of Kentucky had imposed a tax "on bank stock" of fifty cents on each share thereof, equal to $100 of stock therein owned by individuals, corporations or societies." (Official page 354; Law page 703).

The fourth defense set up by the National Bank, the plaintiff in error and original defendant, was: "That the shares of the

stock are the property of the individual shareholders, and that the Bank cannot be made responsible for a tax levied on those shares, and cannot be compelled to collect and pay such tax to the State." (Official Page 355; Law Page 702.)

In relation to this defense, the opinion said:

"If the State of Kentucky had a claim against a stockholder of "the bank who was a non-resident of the State, *it could, undoubt-"edly, collect the claim* by legal proceeding, in which *the bank "could be attached or garnisheed, and made to pay the debt out "of the means of its shareholder under its control. This is, in "effect, what the law of Kentucky does in regard to the tax of "the State on the bank shares.* It is no greater interference with "the functions of the Bank, than any other legal proceedings to "which its business operations may subject it, and it in no manner "hinders it from performing all the duties of financial agent of "the government." (Official page 362-363; Law pages 703-704).

The principle or analogy relied upon in the case cited *supra*, (*First National Bank vs. Kentucky*), is that of garnishee process, or, as it is sometimes called, trustee process, where the limit of the liability of the garnishee or trustee is the property or means of his creditor in his possession or custody, or under his control, which is sought to be subjected to the payment of a debt, owing by the creditor of the garnishee, to the plaintiff. Any liability of the garnishee or trustee in excess of the property or means of his creditor in the hands of the garnishee or trustee, would create a primary liability on the part of the garnishee or trustee to pay the debt of another, and would be a taking of the property or means of such garnishee or trustee without due process of law.

The case of *Lionberger vs. Rowse*, 76 U. S. 468, (19 Law 721) previously cited, is based upon the previous case of *First National Bank vs. Kentucky*, 76 U. S. 353, which it cites and follows, without restating the principles involved. (Official page 477; Law page 725).

In *United States vs. Baltimore & Ohio Ry. Co.*, 84 U. S (17 Wall) 322, (21 Law 497), the United States claimed taxes in the sum of $87,000, assessed upon certain interest payable to the City of Baltimore, which taxes were assessed under Section 122 of the Internal Revenue Act of Congress, passed in 1862, as amended in 1864. The City of Baltimore had issued corporate bonds in the sum of $5,000,000: The proceeds thereof, less a sinking fund, were paid to the Railroad Company, to induce and enable the Company to build its railroad into said City. To indemnify said city against loss, and to secure the payment by the Railroad company of the interest and principal of said bonds, said Rail-

road Company executed a mortgage to the city upon its road and franchise. (Official pages 323, 324; Law Pages 598, 600).

The opinion, delivered by *Mr. Justice Hunt*, held that the Railroad Company was merely the agent to collect and pay over the taxes to the U. S.; that the City was the party really paying the tax by its being deducted from the interest payable to the city; that the purpose of the issuance of the $5,000,000 of bonds was governmental, and 'within the range of the municipal duties of the city, and that the tax cannot be collected.'

Upon the question of the agency of the Railroad company to collect and pay over the taxes to the United States, the opinion referred to the prior case of *Haight vs R. R. Co.*, 73 U. S. (6 Wall) 17, (18 Law 819), in which case the opinion was written by *Mr. Justice Grier*, and said:

"This is a clear, distinct and unqualified adjudication, by the "unanimous judgment of this Court, that the tax imposed by the "122nd section is a tax imposed upon the creditor or stockholder "therein named; that the tax is not upon the corporation, and that "the corporation *is made use of as a convenient and effective in-"strument for collecting the same.* It is a sequence in logical "connection with that provision of section 117, which specifies, as "the subject of individual taxation all the earnings, profits, gains "and income, from whatever source derived, and whether divided "or not, except the amount derived from the sources indicated in "the 122nd section. Of the incomes specified in section 117, the "individual must make specific returns, and be directly taxed "thereon. Upon or for the incomes received from the sources "mentioned in section 122 no tax is directly imposed upon the "owner. *That tax is to be returned by, and collected from the cor-"porations as his agent and instrument.* (Official page 326; Law "page 599).

"A tax is understood to be a charge, a pecuniary burden, for the "support of Government. Of all burdens imposed upon mankind "that of grinding taxation is the most cruel. *It is not taxation "that government should take from one the profits and gains of "another.* That is taxation which compels one to pay for the sup-"port of the Government from his own gains and of his own prop-"erty." (Official page 326; Law page 599).

"In the cases we are considering the corporation parts not with "a farthing of its own property. Whatever sum it pays to the "Government is the property of another. Whether the tax is "five per cent on the dividend or interest, or whether it be fifty "per cent, the corporation is neither richer nor poorer. What-"ever it thus pays to the Government, it by law withholds from the

"creditors. If no tax exists, it pays seven per cent, or whatever "be its rate of interest, to its creditor in one unbroken sum. If "there be a tax it pays exactly the same sum to its creditor, less "five per cent thereof, and this five per cent it pays to the Gov- "ernment. The receivers may be two, or the receiver may be "one, but the payer pays the same amount in either event. It "is no pecuniary burden upon the corporation, and no taxation "of the corporation. The burden falls on the creditor. He is "the party taxed." (Official page 326; Law page 599).

In the foregoing case, (*U. S. vs. B. & O. R. R. Co.*), the interest was to be paid in sums certain, payable at different dates, certain. Unless the Railway company became insolvent, and the security insufficient, the corporation must owe these Sums, and would have them in its possession; it could deduct the five per centum due to the Government from the funds of the creditors which it held, and pay them over to the Government. It was again, in the nature of a garnishment proceeding. There was no attempt to make the corporation *primarily liable* for this tax, in case there was no money or property, or there was insufficient money or property, belonging to the creditor of the corporation in the possession of the corporation, with which to pay the tax.

In *Bell's Gap R. R. vs. Pennsylvania*, 134 U. S. 232, (33 Law 892), the law of Pennsylvania provided that 'bonds and other securities issued by corporation' should be taxed at three mills on the dollar of the nominal or par value thereof. An account was made up, under protest, of the amount of this tax upon all scrip, bonds and certificates of indebtedness of plaintiff in error, the Railway company, owned by residents of Pennsylvania, upon which the State sought to collect said tax. The Railroad company tendered an appeal, which carried the case to the Court of Common Pleas of Dauphin County, where it was tried and decided in favor of the company. The State carried the case, in error, to the Supreme Court of Pennsylvania, which reversed the case. Plaintiff in error then carried the case, in error, to this Court, which affirmed the judgment of the State Supreme Court. Some of the principal claims made were, *that the company was taxed for property it did not own;* that the tax was in violation of the XIVth Amendment; and was also void as impairing the obligation of the company's contract with its creditors.

The opinion, delivered by *Mr. Justice Bradley*, said:

"The presumption is that corporate securities are worth their "face value. Besides, the person that holds them is not affected "by the tax unless he received his interest from which the tax "is deducted. *So long as the interest is paid the security has to*

" *him full productive value; when it is not paid he pays no tax.*"
" (Official page 236 ; Law page 134-left col.). "3. *That the*
" *corporation is taxed for property it does not own.* This objec-
" tion is not true in point of fact. The corporation as the debtor
" of its bondholders, *holding money in its hands* for their use,
" namely, the interest to be paid, *is merely required to pay* to the
" commonwealth *out of this fund* the proper tax due on the sec-
" urity. *The tax is on the bondholder, not on the corporation.*
" This plan is adopted as *a matter of convenience, and as a se-*
" *cure method of collecting the tax.* That is all. It injures no
" party. It certainly does not infringe the constitution of the
" United States by making one party pay the debts and support
" the just burdens of another party, as is implied in the objection."
(Official page 239 ; Law page 896).

In the *Bell's Gap R. R. Co.* case, just cited, there was again, no primary liability imposed upon the Railroad Company to pay the tax assessed, without regard to the money or property of the person liable for the tax, in the possession or custody of the Company, from which to make the payment. *There was no liability on the part of the company, unless it held money subject to the tax, belonging to one of its creditors.* Whether the corporation be considered as garnishee, trustee or agent, in all of these cases, the liability to pay the tax was limited to the funds of another, in possession of the company, from which the payment could and was to be made.

In *Merchant's National Bank vs. Pennsylvania*, 167 U. S. 461, (42 Law 236) the opinion, by *Mr. Justice Brewer*, showed that the State of Pennsylvania had assessed a state tax of 4 mills on the dollar, of actual value, of each share of stock in National Banks, within the State, but permitted the Bank *to collect annually from the shareholders thereof* a tax of 8 mills on the dollar, on the par value, of all such shares, and such shares were, thereupon, to be exempt from local taxation. (Official page 461; Law page 237).

The opinion said:

" It is further insisted that the act is really one taxing the bank,
" and not taxing the shares of stock as the property of the stock-
" holders; but this is obviously a misinterpretation of the statute.
" *That simply makes the bank the agent to collect from the share-*
" *holders the tax imposed upon the shares.* The language of Sec.
" 7, in this respect, is clear, for it provides that the National Bank
" which fails to elect *to collect and pay* the 8 mills shall make a
" report to the auditor general 'setting forth the full number of
" shares of the capital stock issued by such national bank, and the

"actual value thereof, whereupon it shall be the duty of the auditor "general to assess the same for taxation,' and also that after such "report is made to the auditor general, 'it shall be his further duty "to hear any stockholder who may desire to be heard on the ques- "tion of valuation of the shares as aforesaid; and he shall have "the right by other evidence, to satisfy himself as to the correct- "ness of the valuation of said shares of stock in said report con- "tained, and to correct said valuation. The auditor general shall "thereupon *transmit to the said national banks a statement of* "*the valuation and assessment* so made by him, and the *amount of* "*the tax* due to the commonwealth *on all of said shares, which tax* "*the said banks shall within thirty days after receiving said state-* "*ment, collect from their shareholders and pay over into the state* "*treasury.*" (Official pages 465-466; Law page 238)

"That the State has the right to make the bank *its agent to col-* "*lect* the tax from the individual stockholders was settled in *First* "*National Bank vs. Kentucky*, 76 U. S. (9 Wall) 353. (9 Law "701)." ~~(Official pages 465-466; Law page 238)~~

In the foregoing case, (*Merchant's National Bank vs. Pennsylvania,*) there are two distinct provisions as to agency of the Bank to collect and pay over the *taxes assessed on the shares belonging to the shareholders.*

The first one, (Sec. 6 of the Act), authorizes the Bank to collect annually from its shareholders 8 mills on the par value of the stock, and pay over the same, thereby exempting the shares from local taxation. There is no *primary liability* to make payment, on the part of the bank; *it is liable only, as an agent in possession, for such sums as it actually collects,* sufficient in amount to pay the required 8 mills on the par value of the shares.

The second one, (7 of the Act), requires the bank to collect, within thirty days, the 4 mill tax assessed by the auditor general against the shares belonging to those shareholders who have not paid the 8 mill tax under 6. There is no *primary liability* here attempted to be established *against the corporation.* The bank is only liable for what it actually collects from the shareholders. True, there is a duty to collect imposed on the Bank, and its negligent failure to perform this statutory duty, might, and probably would, create a liability on the part of the Bank to the State for any loss thereby occasioned to the State. But that liability for negligence is of an entirely different kind, from the liability which holds the bank primarily, for the payment of the tax from its own funds though it has no funds of the shareholder in its possession, and although it has used due diligence to collect; but has failed so to do.

There is not a syllable in the foregoing opinion, which authorizes a State to *compel the bank primarily to pay*, from its own funds, a tax on the shares belonging to the individual shareholders, although it has in its possession no funds belonging to such shareholders, and, by due diligence, is unable to obtain such funds from the shareholder.

In *Corry vs. Baltimore*, 196 U. S. 466, (49 Law 556), wherein the opinion was delivered by *Mr. Justice White*, plaintiff in error, as plaintiff, commenced a suit to restrain the New York and Baltimore Transportation Company from paying to the State of Maryland and the City of Baltimore, certain taxes assessed, under the laws of the State of Maryland, upon 150 shares of stock of said Company standing in the name of plaintiff in error on the books of the Company; the Mayor, Council and Treasurer of the City, and the Treasurer of State were also made parties defendant. The bill was dismissed by the trial court, and that judgment was affirmed by the Maryland Court of Appeals and also by this Court. The opinion said:

"The statutes undoubtedly impose upon a Maryland corpora-
" tion the duty of paying for and on account of the owners the
" taxes assessed in respect of the shares, *and compel such payment*
" *without reference to the dividends*, giving to the corporation a
" lien upon the shares of stock, and entitling the corporation, when
" it pays the taxes, to proceed by a personal action to recover the
" amount paid." Citing Maryland cases. (Official page 472; Law page 560).

Quoting from *U. S. Electric Co. vs. State*, 79 Md. 63, the opinion of this court further said:

" But the tax is not a tax upon the stock, or upon the corpora-
" tion, but upon the owners of the shares of stock, though the offi-
" cers of the corporation are *made the agents* of the State for the
" collection of the State tax * They, (the shares), belong to the
" stockholders, respectively and individually, and when, for the sake
" of convenience in collecting the tax thereon, the corporation pays
" the State tax upon these shares into the State treasury, it pays
" the tax, not upon the company's own property, nor for the com-
" pany, but upon the property of each stockholder, and for each
" stockholder respectively, by whom the company is entitled to be re-
" imbursed. Hence, when the owner of the shares is taxed on
" account of his ownership, and the tax is paid for him by the
" company, the tax is not levied upon or collected from the corpora-
" tion at all." (Official pages 472-473; Law page 560).

The opinion of this Court further stated, that the Court of Appeals of Maryland had held, "moreover, that *the State might*

compel the corporation to pay such taxes in behalf of the stockholders, and confer upon the corporation a right of action to obtain reimbursement from a stockholder when the payment was made." (Official page 474; Law page 560).

The opinion of this Court further referred to its prior decisions, wherein the corporation, *having in its possession funds, belonging to the owners of the property taxed,* had been required, *as agent,* to pay therefrom the taxes assessed, and quoted from the Kentucky case, (*First National Bank vs. Kentucky*) 76 U. S. (9 Wall) 353; 19 Law 701), the extract, previously set out in this argument, *showing its analogy to a garnishment proceeding.* (Official pages 475-476, law page 561).

The opinion of this Court further said:

"The principle upheld by the rulings of this Court to which we "have referred, concerning the taxation by the States of stock in "national banks, is that the sovereignty which creates a corpora-"tion has the incidental right to impose reasonable regulations "concerning the ownership of stock therein, and that a regulation "establishing the *situs* of stock for the purpose of taxation, *and* "*compelling the corporation to pay the tax on behalf of the share* "*holder,* is not unreasonable regulation. Applying the principle, "it follows that a regulation of that character, prescribed by a "State in creating a corporation, is not an exercise of the taxing "power of the State over persons and things not subject to its "jurisdiction. And we think, moreover, that the authority so "possessed by the State, *carries with it the power to endow the* "*corporation with a right of recovering against the stockholder* "*for the tax which it may have paid on his behalf.*" (Official pages 476-477; Law page 562).

In the foregoing case, (*Corry vs. Baltimore*), it is unquestioned that the corporation had in its possession funds with which to pay said tax. Corry, the owner of the shares, objected to the constitutionality of the Maryland statute, and sought a restraining order to prevent its payment and collection. The facts bring the case squarely within the prior holdings of this court on the point, that a corporation *in possession of funds* sufficient to pay a tax assessed upon the shares of stock in the hands of the shareholder, *may be made the agent* of the state to collect and pay over said tax, and may be required to pay the same from the funds of the shareholder in its possession. This is as far as any decision of this court has gone, as applied to the facts before the Court, and the 'Corry' case in its facts, is identical in this respect, with the prior cases, on the same point, heretofore decided by this Court.

The 'Corry' case however, shows that the Maryland Court of

Appeals had gone a stage further, and had held that the corporation might be made primarily liable for the payment of the tax on the shares, and be compelled to pay such tax, whether or not it had in its possession, money or property of the shareholder, sufficient in amount to pay the tax, and. also, be compelled to look for recoupment to a personal action against the shareholder, or to the enforcement of a lien on the shareholder's shares, as security for repayment of the tax on the shares, paid by the corporation.

Only the corporation, compelled to make such payment, could question the constitutionality. under the Federal Constitution, of the State statute compelling primary payment by the corporation. In the 'Corry' case, the Transportation company, did not raise this question; Corry could not do so. The point, therefore, has not been directly presented to or passed upon by this Court, but only by the Maryland Court of Appeals.

In *Hershire vs. First National Bank,* (Iowa City), 35 Iowa 272, plaintiff as county treasurer, sued defendant Bank, to recover about $2000.00 of taxes claimed to be due from the Bank, as taxes assessed upon the shares of stock of the Bank, owned by non-resident stockholders.

The laws of Iowa of 1868, Chapter 153, 2, required a listing of the shares of stock of the National Bank, in the name of each shareholder, and provided that 'each banking association shall be liable to pay the same *as the agent* of its shareholders, under the provision of Sec. 725 of the Revision of 1860, and it shall be the duty of the association to retain so much of any dividend or dividends belonging to any shareholder as shall be necessary to pay any taxes levied upon his or her shares.' (Opinion page 274).

Section 725, above referred to, required the assessment to any person acting *as the agent* of another of any property in his possession or under his control or management, with a view to investing, loaning or using the same for pecuniary profit, and made the agent personally liable for the tax on the same. (Opinion p. 275).

The opinion, by *Cole, J.*, stated, that the liability of the Bank to pay taxes was placed on the same footing as *the liability of other agents* to pay taxes under said section 725; and that this liability only arose where money, property or credits were under their or its control. *"Hence this fact must be averred in order to state a cause of action."* (Opinion pages 275-276).

The opinion further said:

"The shares in the capital stock of the banking association are the " property, and under the control of the shareholders. They are " not under the control or management of the banking association

"in any legitimate sense. * * All that we here intend to say is that "the shareholder himself in legal contemplation owns, controls, "and manages his own shares, nothing different in fact being "shown. And hence, the banking association is not liable for the "tax due from shareholders, under our statute, simply because "they are holders of shares in the capital stock of such banking "association." (Opinion page 276).

"In brief, our view of the statute is, that it effects a statutory "garnishment of the bank, to secure the payment of the taxes due "from its shareholders. To make it liable, *it must be shown that "the bank now has or has had dividends or other money or prop-"erty belonging to the delinquent shareholder.*" (Opinion page 277).

Reference is made in the foregoing 'Hershire' case to the Kentucky statute which was before this court in the case of *First National Bank vs. Commonwealth of Kentucky*, 76 U. S. (9 Wall), 353 (19 Law 701), and the Iowa Supreme Court stated that the Kentucky statute created an absolute liability of the Bank to pay the tax.

We have previously quoted from the opinion of this court, in said case of *First National Bank vs. Kentucky*, wherein this court likened the Kentucky statute to a claim in favor of the State against a non-resident stockholder, for which *the bank could be attached or garnisheed, "and made to pay the debt out of the means of its shareholder under its control."* This was immediately followed by the decisive statement: *"This is in effect, what the law of Kentucky does in regard to the tax of the State on the bank shares."* (Official page 362; Law page 703- right column).

Section 725 of the Revision of Iowa of 1860, referred to in the 'Hershire' case, is in substance, the same, and is almost identical in terms, in its material parts, with Code of Iowa, of 1897, 1320, on the same subject, quoted near the commencement of this division of our brief.

We further claim, however, that even if the right given by the Iowa statutes to the corporation to recover, by action from the shareholder, the amount paid in discharge of the tax assessed on the shares of stock, and if the lien on the shares of stock in favor of the corporation to secure the amount of the tax so assessed and paid by the corporation, were held to apply to Savings Banks, still, we insist that the tax against the corporation, and the provision of the statutes, above referred to, are in violation of the Federal constitutional provision against the taking of property without due process of law.

There can be no doubt that this scheme of taxation, and method of collection of the tax is primarily and exclusively adopted for the benefit of the State, to secure prompt payment in one sum, of the taxes assessed upon the shares of stock. It is conceded that the purpose is right and proper, if it is carried out in such manner as not to effect the constitutional rights of the corporation under the Federal Constitution. The plan is of no benefit to the corporation. At the very best, the corporation can only succeed in recovering what it has paid out by way of taxes, and then it will stand just where it did before the payment of the taxes was made. The *whole operation was without any benefit or advantage whatever to the corporation.*

But we insist that the right to sue for a recovery, or the legal steps required to enforce the lien, necessarily involve the employment of counsel, learned in the law, at an expense equal to a large percentage of the tax paid, and frequently many times exceeding the whole amount of the tax involved, besides the necessary and heavy incidental expenses of litigation, which are not taxable as costs, together with the loss of the use of the money paid, until the litigation is finally determined and the judgment collected, if that proves collectible.

Such a statute compels the corporation to relieve the state and its municipal subdivisions from the expense of counsel fees and the incidental expenses of litigation to collect its taxes, and enables the State to shoulder this burden from itself onto the corporation, without any possibility of recoupment for these expenditures, by the corporation, from any source. This is a compulsory taking of the property and funds of the corporation for the benefit of the State, without compensation and without due process of law. If the corporation is unwilling to expend these large sums to secure recoupment, it is compelled to pay and lose the tax, which is only another form of taking property without compensation, and without due process of law.

This is a complete departure from the garnishment principle of collecting taxes, which has received the approval of this court.

We do not, for an instant, question the right of the state to enforce the collection of a tax, by a suit brought and conducted by its own legal officers, and at its own expense, or its right to establish and enforce, by its own legal officers and at its own expense, such lien as it may see fit to establish or create, upon or against the property of the tax payer, within the jurisdiction of the State. to secure payment of the tax assessed.

The question is, whether the State, by compulsory statute, may relieve itself from these necessary expenses, and compel a corpora-

tion, at its own expense, to an indefinite and indeterminable amount, and without any benefit to the corporation, to maintain expensive litigation so as to collect a tax for the sole and exclusive use and benefit of the State, without possibility of reimbursement of such expenditures, or, as an alternative, to pay the tax itself, and then lose it without any possibility of reimbursement.

The case of *Corry vs. Baltimore*, 196 U. S., 466, (49 Law 556) serves, to some extent, to illustrate the point we are urging. In that case, the total taxes involved were two sums respectively of $43.27 and $36.49, aggregating $79.76. The litigation was in reality between the shareholder, Corry, and the City and State officials. The corporation was required, by law, to pay the tax and was willing to do so, out of the shareholder's money under its control. In case it had voluntarily paid the tax, and had had no money or property of the shareholder in its possession, the same litigation would have arisen between Corry and the corporation.

The 'Corry' case passed through the Circuit Court of Baltimore City, the Court of Appeals of Maryland, and, finally, through this court. It is manifest that the tax involved was a mere bagatelle to the fees of counsel and the incidental expenses incurred in the progress of the litigation. The same thing is true of the case at bar.

Several other of the cases which have been before this Court illustrate the point under consideration. In *Merchant's National Bank vs. Pennsylvania*, 167 U. S. 463, 464, (42 Law 237), this Court, speaking through *Mr. Justice Brewer*, said:

"Again it will be perceived that this inequality in the burdens "results from a privilege offered to all, and in order to *induce* "*prompt payment of taxes, and payment without litigation.* To "justify the propriety of such inducement, *we need look no further* "*than the present litigation.*"

Many shareholders are not residents of the city, or of the State, where the Bank is located. Shares are frequently sold, transferred, pledged or hypothecated, so that the persons who own shares on January 1st of the year of assessment, do not, on the following January 1st, have any title to or interest therein, or only a mere equity of redemption subject to a large prior lien, while the shareholders themselves get into failing circumstances or insolvency, respectively rendering a mere lien on the stock or a personal judgment against the shareholder utterly worthless, involving a loss to the bank, both of the taxes paid and of all sums paid for attorneys's fees and expenses in pursuing its legal remedies and this under a compulsory provision of law, from which the corporation can obtain no relief, unless it is secured to the corporation by the Federal Constitution.

The Iowa provision for the enforcement or foreclosure of a lien on the stock, belonging to the shareholders, to recover the tax assessed upon the shares of stock, and paid by the corporation, is of doubtful validity, consisting merely of a notice by registered letter. The sale must be by Sheriff, whose fees must be advanced by the Bank. After an apparent title has been thus acquired, through the Bank bidding in the shares, for we cannot believe that any other well advised person would bid, at least until the law is settled by this Court, the Bank, has a costly action to defend its title, and to pay out counsel fees and expenses of litigation against any assignee, transferee or pledgee of the stock claiming title to or interest therein, or a lien thereon, acquired prior to the date of the sheriff's sale, or the date of the payment of the tax, or whenever the lien accrues; besides being compelled to redeem from prior liens.

The date when this lien on the shares accrues, under the statute in question, is very uncertain. Apparently it only arises on and from the date of payment, by the corporation, of the taxes assessed upon the shares of stock. In any event, a year or more must elapse between the date of the assessment and the date when the tax matures or the date when the lien accrues thereon.

A compulsory payment by the corporation, of the tax on the shares in the hands of a shareholder, where there is no recoupment at all, or, only a partial recoupment of the sum so paid by the corporation, is, to the extent that there is no recoupment, a taking from or depriving of the corporation of its property without compensation and without due process of law.

So also, a compulsory payment by the corporation of sums necessarily expended by the corporation, other than taxable costs, in pursuing its legal remedies to secure the recoupment of money paid by it in discharge of taxes assessed upon shares, in the hands of an individual shareholder, as to which expenditures there is no possibility of any recoupment, is a taking from or depriving the corporation of its property, for the sole use and benefit of the State, without compensation, and without due process of law.

In *Norwood vs. Baker*, 172 U. S. 269, (43 Law 443), this Court, speaking through *Mr. Justice Harlan*, said:

"It has been adjudged that the due process of law prescribed by "that (14th) amendment, requires compensation to be made or "secured to the owner when private property is taken by a State, "or under its authority, for public use." Citing cases. (Official page 277; Law page 447).

This is not the payment, by the Bank, of its own taxes, or of taxes assessed on its property. It is the compulsory payment of

the taxes of another, the shareholder, for the sole benefit of the State, or the compulsory expenditure and loss, for the sole benefit of the State, of money paid out by the corporation other than taxable costs, in litigation in attempting to obtain recoupment or reimbursement from the shareholder, of the taxes on his shares, paid by the corporation.

It may be assumed that a State has the power to impress with or impose upon any funds belonging to a shareholder in the hands of the Bank on the date as of which the assessment for taxation is made, (in Iowa, on January 1st of each year), a lien for the taxes subsequently assessed and levied upon the shares of stock belonging to said shareholder, and to authorize the corporation to withhold said funds from the stockholders, and to apply them upon the tax assessed, when such tax becomes due and payable. It may further be conceded that such provision would be constitutional, only a small amount of bookkeeping being necessary to keep the accounts straight. Such provisions would be fair to all concerned, the shareholder, the corporation and the State.

But no such provision of the law exists in Iowa. The tax is assessed as of January 1, 1902, and becomes payable on January 1st, 1903, a whole year later, and there is no provision to secure or protect the corporation during this interval. The Bank is absolutely bound to pay the tax when it becomes due, whether it ever gets a recoupment or not, and the provisions for recovering or recoupment by action, or by enforcement of the lien, even if they applied to Savings Banks, compel a large unascertainable and involuntary payment of the funds of the Bank, without any benefit to the corporation, and for the sole and exclusive benefit of the State. This is a taking of property without compensation and without due process of law.

Equal protection of the laws: Under the statutes of Iowa, which have already been set out *supra* in this division of our brief, and are hereby referred to, plaintiff in error claims that it has been denied the equal protection of the laws, secured to it by the XIVth Amendment to the United States Constitution.

These Iowa Statutes require shares of stock in State Banks, Savings Banks, and Loan and Trust Companies, to be assessed, for taxation, to the corporations, without regard to the money or property of the shareholder which may be in, or come into, the possession or custody, or under the control, of the corporation; while shares of stock of National Banks and of all corporations organized under the laws of Iowa, other than those above enumerated, are assessed for taxation to the individual shareholders.

These statutes also require, that where the shares are assessed

for taxation to the shareholders, the corporation shall pay the taxes so assessed on the shares, and the statutes give to such corporations a right of full recoupment and reimbursement, from the shareholder, for the taxes so paid by the corporation, with a right on the part of the corporation to withhold sufficient of the funds belonging to the shareholder to make such recoupment, a right to sue the shareholder for the reimbursement of the taxes so paid, and the statutes also create a lien upon such shares of stock, and provide a method for selling the same, to recoup and reimburse the corporation for taxes so paid.

None of these rights of recoupment or reimbursement, retention of funds, to sue for a recovery, or to enforce a lien upon the shares, with a right to sell the same to pay the taxes, are given to Savings Banks and the other enumerated corporations, to whom shares of stock are assessed, so as to reimburse and indemnify the corporations for taxes paid by them, upon the shares belonging to the individual shareholders.

This is not a classification arising from any difference in making the assessment, because of the nature of the business conducted, or the nature of the property to be assessed. The property in each case is identical,—the shares of stock belonging to the shareholder. The basis of taxation is identical—, the value of such shares on January 1st of each year. The ownership is identical,—the shareholders are the owners of the shares assessed.

The protection, right of reimbursement and indemnification against loss in favor of the corporation, is, in each case, equally due to each and all of the corporations, which pay taxes so assessed on the property of the shareholders. The giving of this protection, right of reimbursement and indemnification to part of these corporations, and denying it to the other corporations, is a denial to the latter of the equal protection of the laws.

The *Bell's Gap R. R. Co. vs. Pennsylvania*, 134 U, S, 232, (33 Law 895), the State assessed a three mill tax upon the nominal or face value of the funds, instead of assessing it upon the actual value. It was claimed that this deprived the corporation of the equal protection of the laws. In this connection, the opinion delivered by *Mr. Justice Bradley*, discussed the general question of a denial of the equal protection of the laws and said:

"But, be this as it may, the law does not make any discrimina-
" tion in this regard which the State is not competent to make.
" All corporate securities are subject to the same regulation. The
" provision in the XIVth Amendment, that no State shall deny to
" any person within its jurisdiction the equal protection of the
" laws, was not intended to prevent a State from adjusting its

"system of taxation in all proper and reasonable ways. It may, "if it chooses, exempt certain classes of property from any taxa- "tion at all, such as churches, libraries and the property of chari- "table institutions. It may impose different specific taxes upon "different trades and professions. and may vary the rates of ex- "cise upon products, it may tax real estate and personal property "in a different manner; it may tax visible property only, and not "tax securities for payment of money; it may allow deductions "for indebtedness, or not allow them. All such regulations, and "those of like character, so long as they proceed within reasonable "limits and general usage, are within the discretion of the State "Legislature, or the people of the State in framing their Con- "stitution. But clear and hostile discriminations against particular "persons and classes, especially such as are of an unusual character, "unknown to the practice of our governments, might be obnoxious "to the constitutional prohibition. (Official page 257 Law page "895). "It would, however, be impracticable and unwise to at- "tempt to lay down any general rule or definition on the subject, "that would include all cases. They must be decided as they "arise. We think that we are safe in saying that the XIVth "Amendment was not intended to compel the State to adopt an "iron rule of equal taxation. If that were its proper construction "it would not only supersede all those constitutional provisions and "laws of some of the States, whose object is to secure equality "of taxation, and which are usually accompanied with qualifi- "cations deemed material; but it would render nugatory those dis- "criminations which the best interests of society require, which "are necessary for the encouragement of needed and useful in- "dustries, and the discouragement of intemperance and vice, and "which every State, in one form or another, deems it expedient "to adopt. (Official Page 257 Law Page 895).

"The general purpose and scope of the XIVth Amendment, and "the general qualifications necessary to be applied to it, are well "stated in *Barbier vs. Connolly*, 113 U. S. 27, 31, (28 Law 923, "924). *Mr. Justice Field*, in delivering the opinion of the court, "there said: "The XIVth Amendment, in declaring that no "'State shall deprive any person of life, liberty or property with- "out due process of law, nor deny to any person within its juris- "diction the equal protection of the laws,' undoubtedly intended not "only that there should be no arbitrary deprivation of life or liber- "ty, or arbitrary spoliation of property, but that equal protection "and security should be given to all under like circumstances in the "enjoyment of their personal and civil rights; that all persons should "be equally entitled to pursue their happiness and acquire and en- "joy property; that they should have like access to the courts of

"the country for the protection of their persons and their prop-
"erty, the prevention and redress of wrongs and the enforcement
"of contracts; that no impediment should be interposed to the pur-
"suits of anyone except as applied to the same pursuits by others
"under like circumstances that no greater burdens should be laid
"upon one than are laid upon others in the same calling and con-
"dition; and that in the administration of criminal justice no
"different or higher punishment should be imposed upon one than
"such as is prescribed to all for like offenses. But neither the
"Amendment—broad and comprehensive as it is—nor any other
"amendment, was designed to interfere with the power of the
"State, sometimes called the police power, to prescribe regulations
"to promote the health, peace, morals, education and good order
"of the people, and to legislate so as to increase the industries of
"the State, develope its resources and add to its wealth and pros-
"perity." (Official page 5 Law page 895.)

"With due regard to these considerations, we are clearly of
"opinion that the method of assessing the tax in question, on
"the face value of corporate securities in Pennsylvania, is not
"violative of the XIVth Amendment to the Constitution.
(Official page 5 Law page 895).

To the same effect see: *Merchant's National Bank vs. Pennsylvania;* 167 U. S. 464, 465; (42 Law 237). *Barbier vs. Connolly;* 113 U. S. 27, 31, (28 Law 923, 924). *Ragan vs. Farmer's Loan and Trust Co.,* 154 U. S. 399, (38 Law 1024).

In *Cotting vs. Godard,* 183 U. S. 79, (46 Law 92), the Legislature of the State of Kansas passed an Act, although general in its terms, which, in its application to the facts, limited the charges to be made by only one corporation engaged in the stock yard business in said State.

The Act depended, for its application, on the amount of business done, but in fact, there was only one corporation to which it could apply. This Act was held to be in violation of the equal protection of the laws clause of the 14th amendment to the Federal Constitution.

While that case and the case at bar differ considerably in the facts involved, the opinion, delivered, by *Mr. Justice Brewer,* carefully examined the prior decisions of this Court, on the subject of the equal protection of the laws, and the principles involved in the subject. (Official pages 100 to 112, Law pages 105 to 110).

One proposition stated in the opinion, was: "Do the laws secure to an individual an equal protection when he is allowed to come into Court and make his claim or defense, subject to the condition that, upon failure to make good that claim or defense,

the penalty for such failure either appropriates all of his property, or subjects him to extravagant and unreasonable loss? (Official page 100 Law page 105).

The opinion then used certain illustrations and thereupon proceeded thus:

"Of course, these are extreme illustrations, and they serve only "to illustrate the proposition that a statute, (although in terms "opening the doors of the courts to a particular litigant), which "places upon him as penalty for a failure to make good his claim "or defense a burden so great as to practically intimidate him "from asserting that which he believes to be his right, is, when no "such penalty is inflicted upon others, tantamount to a denial of the "equal protection of the laws." (Official page 101; Law page 105).

Upon the subject of classification the opinion said:

"In *Gulf Ry. Co. vs. Ellis*, 165 U. S. 150, 159, (41 Law 666, "669), in which was presented solely the question of classifica- "tion, we said, referring to many cases, both State and National: "But arbitrary selection can never be justified by calling it clas- "sification. The equal protection demanded by the 14th Amend- "ment forbids this". (Official page 107, Law page 108). But "while recognizing to the full extent the impossibility "of an imposition of duties and obligations mathematically "equal upon all, and also recognizing the right of classification "of industries and occupations, we must, nevertheless, always re- "member that the equal protection of the laws is guaranteed, *and* "*that such equal protection is denied when upon one of two parties* "*engaged in the same kind of business and under the same condi-* "*tions burdens are cast which are not cast upon the other.*" (Official pages 111-112; Law page 109).

There is no reasonable or just ground for the arbitrary selection of certain of the private corporations, organized under the laws of a State, and assessing to those corporations the shares of stock belonging to the shareholders, and making those corporations primarily liable for the payment of the taxes so assessed, while, as to all other private corporations organized under the laws of the same State, the shares of stock are assessed to and the taxes thereon payable out of the funds of the shareholders themselves.

There is no reasonable or just ground for giving to part of the private corporations of a State a right of recoupment or reimbursement for taxes assessed upon shares owned by the shareholders which taxes have been paid by the corporation, with a

right to sue thereon, and to have a lien on the shares of stock and the right to sell such shares, to secure such recoupment or reimbursement, while arbitrarily selecting other of the private corporations of the State and refusing to them such right of recoupment, reimbursement, right to sue, and the lien upon and right to sell the shares.

There is also no reasonable or just ground for compelling private corporations, *as agents,* to pay to the State, in one sum, all of the taxes assessed against all of the shares of stock of said corporations, and compelling the corporations either to lose the amounts so paid as taxes, or to seek recoupment by as many different proceedings, by way of litigation, as there are shareholders, for numerous comparatively small sums, when the necessary, but unascertainable expenses of such litigation, equal a large per cent, or all, or many times the amount of, the tax involved, in each case and the collectibility of the judgment, or the value of the title to the shares obtained, is problematical, or utterly worthless; *while all other agents* in the State are required to pay taxes only from the property or funds of the principal, in the possession or under the control of such agents.

Respectfully submitted,

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